Woods and Pirie

Source texts

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Front cover: Second Division of the Court of Session; p557, vol 9, Kay's Originals

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Timeline

- 1779-03-27: Jane Pirie born.
- 1781: Marianne Woods born.
- 1795 or 1796: Jane Cumming born in Patna, Bihar, India.
- 1809: Woods and Pirie open a school together in Edinburgh. Jane Cumming is enrolled by her grandmother, Lady Helen Cumming-Gordon.
- 1810: Jane Cumming, claims to Cumming-Gordon that Woods and Pirie are involved in a sexual relationship. Cumming-Gordon removes Jane from the school, and spreads the rumour.
- 1810-11: All other pupils have been removed from the school, forcing its

closure. Woods and Pirie are financially ruined.

- 1811-03-15: Woods and Pirie sue Cumming-Gordon for libel.
- 1812-02-26: The Court of Session decides in favour of Woods and Pirie; they are awarded £10,000.
- 1812-05-25: Cumming-Gordon appeals to the House of Lords to reduce the damages.
- 1812-05-29: Woods and Pirie petition the Court of Session for their expenses.
- 1819-07-12: The House of Lords dismisses Cumming-Gordon's appeal.
- 1819-11-30: Woods and Pirie again petition the Court of Session for their expenses.

- 1820-01-28: The Court of Session grant this request.
- 1833-03-06: Jane Pirie dies in Glasgow.
- 1844-04-24: Jane Cumming dies in Dallas, Moray, Scotland.
- 1870-01-16: Marianne Woods dies in Brighton.

The racist case against Jane Cumming's evidence

"I hold myself entitled to assume it as an historical fact, and matter of notoriety, that the language of the Hindoo female domestics, turns chiefly on the commerce of the sexes: That the instructions of nurses to their female-infants, relate to the same subject, and are calculated to excite anticipations of its nature, even before the instincts have begun to exist: That the seclusion of women in the Zenanas of the more wealthy, gives birth to contrivances to supply the absence or neglect of males, and gives occasion for this purpose to a commerce with China, to an extent that is surprising; and, in fine, that it is impossible to sojourn in Indostan, without learning, by the age of eight or nine years, somewhat relative to venereal intercourse by observation, as well as instruction."

—Lord Meadowbank's judicial opinion

Glossary:

- **matter of notoriety**: a matter on which a judge does not need to see evidence
- **zenana**: the part of an aristocratic Indian family's house which was reserved for women
- **Indostan**: India

Known only by a French name

1880: from the index-general of the Office of the Surgeon-General, United States Army

Tribadism.

[TRIAL.] Miss Marianne Woods and Miss Jane Pirie against Dame Helen Cumming Gordon. 4°. [*Edinburgh*], 1811–19.

1893-11-16: *The Nation*, New York City, describing this index:

> **and, to have an end, the case of Miss Marianne Woods and Miss Jane Pirie against Lady Gordon Cumming (1811–19), the latter having accused the plaintiffs, who kept a young ladies' school, of a practice known only by a French name, though here anglicised**

1812-04-27, House of Lords

Gordon against Woods & Pirie. Appellant's Petition referred to Appeal Committee.

Upon reading the Petition of Dame *Helen Cumming Gordon*, Appellant in a Cauſe depending in this Houſe, to which *Marianne Woods* and *Jane Pirie* are Reſpondents; ſetting forth, "That this Appeal was preſented "to their Lordſhips upon the 17th Day of *March* laſt, "and agreeably to their Lordſhips late Order, the Appellant's Caſe ought to be lodged by the 28th of this "inſtant *April*: That the utmoſt Induſtry has been "uſed in preparing the Caſe in *Scotland*, and the Petitioner's Agent has reaſon to expect the Draft of it in "a few Days, when it muſt be ſubmitted to the Conſideration of the Counſel here, who are to argue the "Cauſe at their Lordſhips Bar; and being of conſiderable length and Importance, the Appellant humbly "prays, that the Time for giving in the Caſe may be "enlarged for Three Weeks:"

It is ORDERED, That the ſaid Petition be referred to the Committee appointed to conſider the Cauſes in which no Prints of the Appellants Caſes have been delivered.

(SECOND DIVISION.)

May 30, 1811.

PET.—LADY CUMMING GORDON,

AGAINST

Interlocutor sustaining Objection to a Witness.

MACKENZIE & INNES, W. S. *Agents.*
IA. BALFOUR, W. S. *Doer for Respondents.*

Mr. M'Kenzie, *Clerk.*

6 June 1811.
Mr Clerk grand examination
of Mrs Little - see
as to Miss Dunbar
11 June adhering
Stay up with ord Pap

UNTO THE RIGHT HONOURABLE

THE LORDS OF COUNCIL AND SESSION,

THE

PETITION

OF

LADY CUMMING GORDON of Altyre;

Humbly sheweth,

THAT an action of defamation and damages was lately brought, at the instance of Miss Marianne Wood and Miss Jane Pirie, against the petitioner, libelling, that the petitioner had raised and propagated false and calumnious reports to their prejudice; and, in particular, had accused them of improper and criminal conduct, in letters written to the relations or guardians of young ladies at their board

Alex. Lawrie & Co. Printers.

boarding-ſchool, by which the reputation of the purſuers was injured, and their ſchool ruined; and concluding for damages to the amount of 10,000l. The petitioner pleaded in defence, that ſhe was credibly informed, and verily believed, that the purſuers had been guilty of indecent and criminal practices, and, on that account, that ſhe had taken her grand-daughters from the ſchool, and informed thoſe ladies alone to whom ſhe had recommended the ſchool, and who, as ſhe had reaſon to think, ſent relations thither in conſequence, that ſhe was diſſatisfied with the conduct of the purſuers.

After certain proceedings, unneceſſary to be mentioned, the petitioner was appointed to put in a condeſcendence of the facts ſhe averred, and offered to prove. In that condeſcendence, ſhe ſtated, that two young ladies, attending the ſchool, had ſeparately witneſſed certain indecent and criminal practices on the part of the purſuers; that they had mutually informed each other of the circumſtance, and had alſo mentioned it to Charlotte Whiffin, a maid ſervant in the boarding-houſe, who told them that ſhe alſo had repeatedly witneſſed the ſame practices.

The relevancy of the condeſcendence being ſuſtained, a proof was allowed, and taken, by the Judges of the Second Chamber, as commiſſioners. In the courſe of that proof, the two young ladies alluded to were examined as witneſſes; and their evidence correſponded exactly with the facts as ſet forth in the condeſcendence. In particular, they deponed that they had converſed fully with the maid, Charlotte Whiffin, on the ſubject, and had received from her the information ſpecified. A third young lady, attending the ſchool, was alſo examined, who deponed, that ſhe had converſed with Charlotte Whiffin on the ſubject of thoſe improprieties, or at leaſt had heard her unequivocally allude to them, in converſation. Farther, it was proved that all theſe facts and converſations had take place a conſiderable time before the ſchool broke up.

But when Charlotte Whiffin was examined, ſhe deponed, not only that ſhe had never witneſſed any of the practices of which ſhe was ſaid to have given information, but that ſhe had never converſed with any of the three young ladies on the ſubject; and, farther, that ſhe was utterly ignorant of the purſuers being accuſed, or ſuſpected, of miſconduct before the ſchool broke up. In particular, ſhe deponed, that when all the young ladies were ſuddenly taken away, ſhe believed that they were going to a ball or entertainment; and, for ſome time afterwards, that her only

conjecture

conjecture on the ſubject was, that the pecuniary affairs of the purſuers had become embarraſſed.

The teſtimony of this witneſs, therefore, was in direct contradiction to that of the three young ladies; for ſhe not only denied that ſhe had given to the two firſt the information ſpecified in the condeſcendence, or had ſpoken to the third on the ſubject, or alluded to it; but ſhe deponed to a fact, which, if true, rendered it abſolutely impoſſible that ſhe could have given ſuch information, or have had any ſuch converſations. If this witneſs, therefore, was believed, it neceſſarily followed that the petitioner's witneſſes could not be believed.

In this colliſion of evidence, the petitioner propoſed to call Margaret Little, who had been a ſervant to Mr. Raeburn at Deanhaugh, for the purpoſe of proving that Charlotte Whiffin had given ſimilar information to her with that which, according to the depoſitions of the two young ladies, ſhe had given to them; and that ſhe had repeatedly mentioned the alleged miſconduct of the purſuers. But the purſuers objected to the admiſſibility of Margaret Little, for the purpoſe of proving theſe facts; and the Lords Commiſſioners, of this date, May 22, 1811 'ſuſtained the objection.'

This interlocutor is humbly ſubmitted to the review of the Court.

If the object of the petitioner in calling Margaret Little had been to prove the circumſtances which Charlotte Whiffin was reported to have witneſſed, but which ſhe denied ſhe had witneſſed, there is no doubt that her evidence would been inadmiſſible. It would have been an attempt to prove, by hearſay, a fact which the alleged author of the hearſay had denied; and, therefore, ſuch evidence would have been, as the purſuers juſtly termed it, 'the worſt ſpecies of 'hearſay.' But your Lordſhips muſt be ſenſible, that this is not the purpoſe for which Margaret Little is propoſed to be examined. The petitioner never averred, or offered to prove, that Charlotte Whiffin had actually ſeen what the young ladies deponed ſhe ſaid ſhe had ſeen. The truth of her ſtory makes no part of the petitioner's condeſcendence: all that the petitioner alleges is, that Charlotte Whiffin did converſe with the young ladies on the ſubject of theſe improprieties, and, in that converſation, did relate certain circumſtances which ſhe profeſſed to have ſeen. The petitioner's averment that ſuch a converſation took place, and that Charlotte Whiffin's relation was of a certain import, was found relevant, and admitted to proof; and three of the petitioner's witneſſes have ſworn in

terms

terms of the condeſcendence with regard to it. When, therefore, theſe witneſſes are contradicted by Charlotte Whiffin, who ſwears not only that ſhe never held ſuch a converſation, or told ſuch a ſtory, but that ſhe was not in a capacity to do ſo at the time alleged, it ſeems inconſiſtent with the firſt principles of the law of evidence, that the petitioner ſhould not be allowed to refute the teſtimony of Charlotte Whiffin to that fact, and, of conſequence, to corroborate the teſtimony of the other witneſſes. If the petitioner is denied this liberty, the teſtimony of her witneſſes ſtands contradicted, and ſhe is not allowed to take off the effect of that contradiction, by impeaching the teſtimony of the contradictor. If Margaret Little ſhould depone that Charlotte Whiffin converſed with her upon the ſubject of thoſe improprieties, and told that ſhe herſelf had witneſſed them at the time alleged, and if Margaret Little is believed, it follows that Charlotte Whiffin was in a capacity to hold the converſation with the young ladies, and to tell the ſtory to them which they depone they heard from her. The fact of Charlotte Whiffin's knowledge of the ſuſpicion, if eſtabliſhed, is of the utmoſt importance in the cauſe: it proves, in the *firſt* place, that there is no phyſical impoſſibility that the teſtimony of the young ladies on this point ſhould be true, which, if Charlotte Whiffin is believed, muſt be the caſe; and, in the *ſecond* place, it diſcredits the whole of Charlotte Whiffin's evidence, and, of courſe, removes the diſcredit which her teſtimony, if believed, has a tendency to throw on that of every witneſs whom ſhe contradicts.

If the young ladies had deponed, that a certain fact had been related to them by a girl at the boarding-ſchool named A. B., the daughter of C. D., and if Charlotte Whiffin had ſworn, that no girl of that name and family had ever been at the boarding-ſchool, your Lordſhips would certainly have allowed a proof by other witneſſes, that A. B., the daughter of C. D., had been at the boarding-ſchool, in order to take off the effect of the contradiction, and to diſcredit the teſtimony of Charlotte. But that caſe is preciſely the ſame with the preſent. The fact to which Charlotte depones, namely, that ſhe was not in a condition to hold the converſation, or tell the ſtory in queſtion, being contradictory to a fact deponed to by the other witneſſes, and, at the ſame time, capable of being diſproved, it becomes of itſelf a fit ſubject of inveſtigation, as a direct criterion of the regard reſpectively due to the contradictory witneſſes, whoſe teſtimonies are to be weighed againſt each other.

When two witneſſes contradict each other, and when, of neceſſity, the

the evidence of the one is true, and of the other falſe, and when other teſtimony may be obtained with regard to the fact to which the contradiction exiſts, to reject that teſtimony is wilfully to ſhut out the light; it is to refuſe to apply the only touchſtone by which the truth can be diſcovered. The petitioner conceives, therefore, that it is inconſiſtent with the natural principles of the law of evidence, to hold Margaret Little inadmiſſible to rebut Charlotte Whiffin, on a fact as to which Charlotte Whiffin and the young ladies contradict each other.

But it was ſaid, that the fact as to which the contradictions exiſt, is whether the converſations took place between the young ladies and Charlotte Whiffin; and ſince it is not pretended that Margaret Little was preſent at that alleged converſation, any account ſhe can give of it muſt be from hearſay. The anſwer is obvious. The petitioner is not calling Margaret Little to prove, either that a converſation took place between Charlotte and the young ladies, or the import of that converſation, if it did take place, but ſolely as to the fact which Charlotte has averred, that ſhe was not in a capacity to hold that converſation, having never heard or ſuſpected that the purſuers were accuſed of the indecent and criminal practices in queſtion. If Charlotte Whiffin converſed with Margaret Little on theſe indecent and criminal practices, before the ſchool broke up, it does not follow that ſhe converſed with the young ladies upon them; but it undoubtedly follows, that ſhe has given falſe evidence, when ſhe depones, that the ſubject of the alleged converſation never entered her mind till long after that period.

The caſe was put, of an accomplice diſcloſing privately the circumſtances of a crime, and retracting when he was examined at the trial of the perſon whom he had accuſed; and it was juſtly obſerved, that it would be incompetent to redargue his evidence on the trial by a proof of what he had told in private. But that caſe is not parallel to the preſent. If the petitioners were attempting to prove the facts which Charlotte Whiffin gave out ſhe had ſeen, it would be incompetent to make her extrajudicial converſation with Margaret Little the ſubject of proof, in order to contradict her judicial teſtimony. But the fact to be proved by Margaret Little's teſtimony, is not the truth or falſehood of what Charlotte Whiffin ſaid, but the import of what ſhe ſaid; becauſe the import of what ſhe ſaid is now become a circumſtance material to the iſſue. If a witneſs, on a criminal trial, were to depone that he had ſeen the crime committed, and immediately afterwards had given informa-

tion of it to A. B., and if A. B., upon being examined, were to depone, that he never had received any ſuch information, and never heard the priſoner ſo much as ſuſpected of that crime, it would ſurely be competent to examine a third witneſs, for the purpoſe of proving that A. B. had received the information, and was in perfect knowledge of the ſuſpicion which attached to the priſoner. To reject ſuch evidence, would be to ſuffer the perſon on trial to impeach the proſecutor's evidence, without giving the proſecutor an opportunity of corroborating that evidence.

The objection of the purſuers, as ſtated by them in writing, reſolves into three heads. 1. It is ſaid, 'that it was altogether unprecedented for a party, after adducing a witneſs in ſupport of his caſe, to call another witneſs, for no other purpoſe but to diſcredit the depoſition of that witneſs.' The petitioner anſwers, that it is not merely for the purpoſe of diſcrediting Charlotte Whiffin, that Margaret Little is propoſed to be called, but to corroborate the witneſſes whom Charlotte Whiffin contradicts. It is a matter of no conſequence to the petitioner, whether Charlotte Whiffin's depoſition, that ſhe was utterly ignorant of any miſconduct being imputed to the purſuers, until after their ſchool broke up, has originated from want of memory or want of truth; but, certainly, it is of importance to the petitioner to ſhew, in oppoſition to what ſhe has ſworn, that ſhe was fully appriſed of the whole matter; becauſe the evidence of the purſuers witneſſes, in ſo far as they ſay that they communicated with her, would then be perfectly credible. The petitioner is aware, that it is incompetent for the party who adduces a witneſs to diſcredit him by a proof relating to his general character; for example, by offering to ſhew, that he has been convicted of a crime inferring infamy, or the like, becauſe it was his own fault if the witneſs was adduced, when he knew, or ought to have known, that he was unworthy of credit. But it is perfectly competent, when one of two witneſſes adduced by a party, contradicts the other, to ſhew, by new evidence, that the one ought to be believed, and the other not to be believed, with regard to the point at iſſue. If this was not allowed, the ends of juſtice might be defeated in every caſe, by corrupting a witneſs or two, whoſe evidence being rendered unimpeachable by the very act of adducing him, the truth could never be diſcovered. This diſtinction, accordingly, is expreſsly recogniſed in the law of England, where the doctrine of evidence has been more matured than in this country. It is well laid down by Peake, in the following paſſage, on the authority of Lord Chancellor Thurlow,

low, and others.—'It ſhould here be underſtood, that it is the par- Law of Evi-
'ty *againſt* whom a witneſs is called only, that is permitted to at- dence, p. 126
'tack his character by general evidence; for if the ſame privilege
'were allowed to the party calling him, the conſequence would be,
'that ſuch party might deſtroy the credit of a witneſs if he ſpoke
'againſt his wiſhes, and make him a good witneſs if his evidence
'was favourable, at the ſame time that he had the means of deſtroy-
'ing his credit in his hands. But if a witneſs proves facts in a
'cauſe which make againſt the party who calls him, that party, as
'well as the other, may call other witneſſes to contradict him as to
'thoſe facts; for ſuch facts are evidence in the cauſe, and the
'other witneſſes are not called directly to diſcredit the firſt, but the
'impeachment of his credit is incidental and conſequential only.'
The ſame rule muſt obtain in the law of every civilized country, for it is founded in the nature of evidence.

The purſuers ſtated, in the *ſecond* place,—'That the evidence pro-
'poſed was of the very worſt ſort of hearſay, reſolving into an at-
'tempt to prove a fact by hearſay, not merely without the beſt evi-
'dence of that alleged fact, but in direct contradiction to the beſt
'evidence moſt pointedly denying it.' It has already been explained, that this objection originates in a complete miſapprehenſion with regard to the fact propoſed to be proved by Margaret Little. It is not the miſconduct of the purſuers, but the import of a converſation which the petitioner finds it neceſſary to eſtabliſh; and with regard to that converſation, Margaret Little can ſpeak, not from hearſay, but from her own proper knowledge. Is it equitable or reaſonable, that Charlotte Whiffin ſhould be heard to contradict three witneſſes on the part of the petitioner, by ſwearing to a fact which, if true, neceſſarily infers that they are perjured; and that the petitioner ſhall not be allowed to bring evidence that Charlotte Whiffin's teſtimony, with regard to that fact, is utterly falſe?

The *third* ground of objection is the ſuppoſed danger of the precedent. It is ſaid, that 'to examine the perſon now mentioned, for
'no purpoſe but that acknowledged, would be to give occaſion to
'perjury, without adding one particle of legal evidence concerning
'the alleged facts on which the caſe reſts.' The purſuers ſee no danger of perjury, in allowing Charlotte Whiffin to contradict the other witneſſes in the cauſe; but they become alarmed, as ſoon as another witneſs is brought to contradict her, and, of courſe, to corroborate the other three. They would perſuade your Lordſhips, that the credit of every witneſs may be ſafely impeached, whoſe

evidence

evidence tends to criminate them; but that it is incompetent to bring proof with regard to any fact which ſhakes the teſtimony of a ſingle witneſs in their favour. It is quite a miſtake to ſay, that Margaret Little's teſtimony 'cannot add a particle of legal evidence con-' cerning the alleged facts on which the caſe reſts.' If Charlotte Whiffin is believed, not one of the witneſſes who have ſworn to the facts on which the whole caſe reſts can be believed: Whatever evidence, therefore, tends to ſhow that Charlotte Whiffin has ſworn to facts which are not true, corroborates the teſtimony of the other witneſſes, and, therefore, adds to the maſs of legal evidence, or, more properly ſpeaking, removes an objection to the legal evidence on which the caſe of the petitioner is founded.

It is ſaid, that if Charlotte Whiffin's character is to be inveſtigated, Margaret Little's may be inveſtigated alſo; and that this ſort of inquiry would lead to hearſay examinations *ad infinitum*, which is unprecedented in this Court. In the common caſe of an action of reprobator, it is as competent for the character of the reprobatory witneſs to be examined, as that of the witneſs in chief; and when theſe actions were in uſe, that courſe of inquiry which the purſuers repreſent as being unprecedented, occurred in almoſt every proof. But this is not an action of reprobator; it is no attack upon the general character of Charlotte Whiffin. She has ſworn to a fact, the truth of which it is material to inveſtigate; and to that inveſtigation alone the petitioner propoſes to confine her evidence. What tendency this can have to produce hearſay examinations *ad infinitum* the petitioner is utterly at a loſs to conceive. If a witneſs gives an account of a fact which is not true, may not another witneſs, who has the ſame opportunity of knowing that fact, be called upon to give a different account of it?

The purſuers take an opportunity of throwing out ſome inſinuations againſt the character of Margaret Little, as vague as they are unfounded, to which the petitioner is confident your Lordſhips will not pay the leaſt regard. If any legal objection to her admiſſibility, on the ſcore of character, is ſtated, the petitioner will anſwer it. She has reaſon to know, that the reputation of this perſon is to the full as entire as that of Charlotte Whiffin; and that any compariſon between them would not turn out to the advantage of the latter.

II. The petitioner likewiſe propoſed to adduce her grand-daughter, Miſs Margaret Dunbar, as a witneſs in ſupport of ſome of the facts ſet forth in the condeſcendence; and the purſuers having objected to her admiſſibility, on the ground of her relationſhip to the petitioner,

tioner, the Lords Commiſſioners ſuſtained the objection. This interlocutor alſo is humbly ſubmitted to the review of the Court. The ſubject of proof is an occult crime, which it is alleged that the purſuers committed; and the petitioner is allowed a proof of that crime, not for the purpoſe of bringing the purſuers to puniſhment, but of defending herſelf againſt a claim of damages for having removed her daughter from the ſchool, and for having communicated the circumſtance to one or two ladies to whom ſhe had previouſly recommended the ſchool. In theſe circumſtances, it is ſubmitted, that, by the eſtabliſhed principles of the law of Scotland, the witneſs is admiſſible, at leaſt, that ſhe is admiſſible *cum nota*. It is well known to your Lordſhips, that, at an early period, there was a diſpoſition in our law to narrow the limits of parole evidence; and that witneſſes were rejected on frivolous grounds, or, at leaſt, what in the preſent ſtate of ſociety would be accounted frivolous, though the manners of thoſe times might have rendered more ſtrictneſs indiſpenſable. Thus, tenants, domeſtic ſervants, accomplices in a crime, paupers, and women, were excluded, not to mention many other grounds of rejection mentioned in the ſtatute of Robert I, and elſewhere. But this ſtrictneſs has gradually and uniformly relaxed, our courts becoming ſenſible, that it is dangerous to exclude information, from whatever ſource it is derived; and that it is much better to let an objection go to the credit, than to the competency, of a witneſs. Accordingly, for more than a century paſt, the limits of parole teſtimony have been faſt extending in this country; objections to competency are daily exploded; and we ſeem to be haſtening to the period when nothing but a direct intereſt in the cauſe will be held to operate a total excluſion. It is believed, that the beneficial nature of this tendency to the inveſtigation of truth, and the conſequent furtherance of juſtice, is now univerſally acknowledged.

2 stat. R. I, cap. 34.

But, long before this reformation commenced, it was held by our lawyers, that in caſes where, from the nature of the facts to be proved, a choice of witneſſes could not be obtained, for example, as in the caſe of occult crimes, as adultery, inceſt, and the like, every perſon who had had an opportunity of knowing the facts at iſſue, ought to be examined, and the import of their teſtimony weighed, though, in other caſes, they might have been inadmiſſible, on the ground of relationſhip, dependence, or the like. This is explicitly laid down by Lord Stair, whoſe profound and liberal mind taught him to regret the narrow views which then prevailed upon this ſubject, and

to anticipate the reformation which has ſince taken place. But while he cenſures the bias of our law againſt the admiſſibility of witneſſes in general, he lays it down as perfectly eſtabliſhed, that relations are competent as to criminal and clandeſtine acts, where there is a *penuria teſtium*.

Stair, b. iv, tit. 43, § 8. ‘ *Poſitive law, or cuſtom, hath been too apt to reject witneſſes who* ‘ *were not morally inhabile*; which is very allowable where there ‘ is variety of witneſſes, if the other party can give ſufficient evi- ‘ dence thereof; as where any deed is done at a public market, ‘ burial, or marriage, or at ſolemn co ferences before friends or ‘ arbiters, or by examination of the adducer, if he knew of any ‘ other witneſſes, and who they were, or by preliminary examina- ‘ tion of the witneſſes who were the *conteſtes* in the point to be ‘ proved; in ſuch caſes, the judge may warrantably forbear to ‘ examine that witneſs, till ſome others of the *conteſtes* be called; *but,* ‘ *otherwiſe, to exclude thoſe who, by divine law, are habile, and there-* ‘ *by to exclude the adducer from his right, is not warrantable. And,* ‘ *therefore, where it appears that there could not be many witneſſes, thoſe* ‘ *that are preſent will be admitted, though, in other caſes, they will be re-* ‘ *jected; as in encroachments upon men in or about their houſes, if there* ‘ *be any veſtige of a crime, witneſſes are not rejected, becauſe they are* ‘ *ſervants, or of ſuch other relations as otherwiſe would exclude them.* ‘ *And in all clandeſtine acts, there is not to be expected variety of witneſſes;* ‘ *and ſo ſuſpicion ſhould not exclude.*’

The ſame doctrine is taught by Lord Bankton, in terms ſtill more explicit. ‘ Some caſes require that *all perſons capable of obſervation* ‘ *be admitted witneſſes, as above limited. Thus, in occult and domeſtic* ‘ *crimes, all perſons are receivable that are ſuppoſed capable of knowing* ‘ *what happened, though in other caſes incompetent*; becauſe, from the ‘ nature of the thing, there is difficulty in the proof; and otherwiſe ‘ theſe crimes might paſs unpuniſhed; and in other caſes alſo, where, ‘ from the nature of them, there is a penury of witneſſes preſum- ‘ ed.’

B. iv, tit. 20, §

Before referring to the decided caſes on this point, the petitioner would obſerve, that, by the general rule, all relations forbidden by 1681, c. 13, to judge in each other's cauſe, are excluded from being witneſſes for each other without diſtinction: therefore, the admiſſion of any relation within that degree, on the ground of a *penuria teſtium*, is a precedent in favour of the petitioner. Now, as early as the year 1610, a ‘*father's brother*’ to the adducer was received upon a fact done, *quando erat penuria teſtium*. In Thomſon againſt Stevenſon, the

May 1610, Inglis againſt Wilkie. Dec. 19, 1666.

the purſuer's *mother* was received for him *cum nota*, *in re antiqua*. In Brown againſt the town of Kirkcudbright, the Lords ſaid they would admit a *brother-in-law cum nota*, if there *was a penuria teſtium*. Jan. 15, 1679.

The caſe of Cuming againſt Cuming is thus reported by Kilkerran.—' In a proceſs by a wife againſt her huſband for ſeparation and aliment, on account of maltreatment, ſhe was allowed to adduce *their common children* as witneſſes, not becauſe they were the ſame relation to both parties, which was no good reaſon, but becauſe they were neceſſary witneſſes *in re domeſtica*. P. 599.

In the caſe of Cameron againſt Malcolm, where the crime of abduction was alleged, the *mother* and *ſiſter* of the adducer were admitted on her behalf. 1750.

In the cauſe of Boyd againſt Gibb, which was a proof of propinquity to a remote anceſtor, an objection to the admiſſibility of the purſuer's *aunt* was repelled, becauſe there was a *penuria teſtium*. Jan. 20, 1770.

But it has been ſaid that the law, on this ſubject, was altered by the deciſion in the caſe of Dalziel againſt Richmond. It was a declarator of marriage, in which the mother and ſiſter of the purſuer were found incompetent, when adduced by her; notwithſtanding the *penuria* which ſhe alleged, and the deciſions of Barber againſt Stewart, and Cameron againſt Malcolm, in which the objection was repelled. Your Lordſhips will be pleaſed to attend to the *ratio decidendi* in that caſe, which reſts upon a diſtinction of very great importance. In the caſe of a clandeſtine marriage, the purſuer, who has been guilty of a legal offence, by entering into it, ought not to be allowed to plead a *penuria teſtium*, for *ſibi imputet* that there was a *penuria*. Clandeſtine marriages, though tolerated, are diſcouraged; of conſequence, no general rule of evidence ought to be ſuſpended in their favour. It is altogether different where an innocent perſon is proving a crime, either to a civil or criminal effect. The time when, and the place where, the crime was committed, did not depend upon him, and, therefore, it is no fault of his that unſuſpicious witneſſes were not preſent. The report bears,—' That to the deciſion in the caſe of Barber little reſpect ſeemed to be paid, the diſtinction having been made betwixt that *penuria teſtium* which neceſſarily reſults from the ſituation of the party requiring evidence, as when a crime has been committed againſt him, of which the caſe of Malcolm was an example; and ſuch a *penuria* as ariſes from his own fault.' July 10, 1790.

Accordingly, nearly a century before this deciſion, near relations were

were not admitted in a caſe of clandeſtine marriage, on the very
II. 236. ground now ſtated. It is reported by Fountainhall.—'Iſabel Stir-
'ling purſues Hamilton of Grange before the commiſſaries of Edin-
'burgh, for a ſettlement, and offered to prove ſhe was lawfully
'married to him, and had born him children, and yet he had gone
'and married another wife. The commiſſaries admitted her mar-
'riage to probation; and ſhe adducing her father, brothers, and
'ſiſters as witneſſes, it was objected, that, by their propinquity of
'blood, they were inhabile to depone in her favour. *Anſwered*,—
'The marriage being private, there was *penuria teſtium*, and no others
'were preſent. *Replied*,—*Clandeſtine marriages are not to be en*
'*couraged; and if people will go on in that manner, they ought at leaſt*
'*to adhibit indifferent unconcerned witneſſes.* The commiſſaries re-
'pelled the objection, and admitted them *cum nota*.' But the Court of Seſſion altered that judgment. The caſe of Dalzell, therefore, introduced no novelty into the law of Scotland, nor did it all infringe upon the rule, that, in occult caſes, and where there is a *penuria teſtium*, witneſſes ſhould be received in any degree of relationſhip. If a young woman is ſo imprudent to enter into a clandeſtine connection, ſhe muſt take the conſequences, if there are no unſuſpicious witneſſes to prove the marriage. It would be holding out too great a temptation to ſuch irregularities, if ſhe were allowed to reſort to the teſtimony of her near relations, to eſtabliſh a marriage, as they are too deeply intereſted in her *ſtatus* to be unprejudiced in ſuch a caſe. But the matter is altogether different when a crime has been committed, where privacy, of courſe, was ſtudiouſly ſought for by the perpetrator, and where detection muſt often be impoſſible, unleſs every perſon whom chance has thrown in the way is allowed to give teſtimony. It is well obſerved by Sir James Stewart, in treating of the admiſſibility of women as witneſſes,—

Vol. Witness. 'When the fact to be proven falls out under cloud of night, or in
'any remote or ſolitary place, there can be no reaſon to refuſe wo-
'men to be witneſſes, unleſs we deny them the conſcience and
'knowledge of an oath: for, in effect, as crimes fall out with a great
'deal of variety and uncertainty, providence ſhould be regarded as
'to any witneſſes, men or women, that can be found with any pro-
'bability for an evidence.'

But it was ſaid, that although the petitioner was entitled to remove her grand-daughters from the ſchool, if ſhe believed their account of the miſconduct of the purſuers, ſhe was not entitled to inform any other perſon of the circumſtance, until ſhe had obtained

evidence

evidence altogether unexceptionable to convict them. Upon this point, which involves a very important queſtion in morals, ſhe preſumes to entertain a very different opinion. It might eaſily have happened that ſhe ſhould never have been able to procure the evidence of two witneſſes, unexceptionable in a legal point of view, that is to ſay, without the degrees enumerated in the act 1681, to eſtabliſh the guilt of the purſuers. But if ſhe had ſuch teſtimony as, in a moral point of view, would have induced any reaſonable perſon to have believed their guilt, ſhe conceives that it was her duty to put her friends upon their guard, whoſe relations were at this ſchool, more eſpecially theſe friends to whom ſhe had warmly recommended the purſuers, of the imminent danger to which thoſe young ladies were expoſed. If they had been contaminated in conſequence of her ſilence and caution, ſhe muſt have for ever attributed their ruin to herſelf; and it would have been but a poor conſolation that ſhe had not ſaved the child of a friend when ſhe had it in her power, from the apprehenſion of an action of defamation, at the inſtance of perſons whom ſhe believed to be guilty. She humbly conceives, if ſhe had reaſonable ground to remove her own grand-daughters, that ſhe was bound, by every tie, to give the alarm to her friends; and if they have imprudently diſcloſed it to the world; that ſhe is not in fault. Farther, that to juſtify herſelf in the preſent action, it is enough for her to ſhew, that ſhe had ſuch moral evidence as would have produced belief in any rational perſon, or even have turned the ſcale of probability on that ſide. Much more, then, muſt it be competent for her to examine every witneſs admiſſible in a criminal court, if the purſuers were on trial for the crime alleged; in which caſe, it is thought, that the plea of *penuria teſtium* would furniſh an irreſiſtible anſwer to the objection under conſideration. It is the intereſt of the community, that crimes ſhould not remain unpuniſhed; but it is much more important that individuals ſhould not be deterred from reſcuing their friends, who are in danger of falling victims to crimes. If the petitioner were attempting to bring the purſuers to puniſhment for their miſconduct, in the Court of Juſticiary, there is no queſtion that Miſs Dunbar might be competently adduced in ſupport of the indictment; it would be ſtrange, then, if ſhe were inadmiſſible in juſtification of the petitioner, who acted as every perſon of common humanity would have acted, who had received the information upon which ſhe proceeded. It would be eaſy to illuſtrate the danger of the purſuers doctrine, which leads directly to this concluſion, that no

perſon is in ſafety to warn another of a crime meditated againſt him, unleſs his informers are without the prohibited degrees. But it is unneceſſary to enlarge on a ſubject which appears to be already ſettled by every precedent and authority in the law of Scotland.

May it therefore pleaſe your Lordſhips, to alter the interlocutors under review, and to allow the witneſſes above mentioned to be examined in the cauſe.

According to juſtice, &c.

GEO. CRANSTOUN.

APPENDIX.

APPENDIX.

No. I.

OBJECTION to MARGARET LITTLE, late Servant to Mr. RAEBURN at Deanhaugh.

THAT by the ſtatements made on the part of the defender, it clearly appeared, that this witneſs was not adduced for the purpoſe of proving, from her own knowledge, any fact or circumſtance tending to inſtruct the *veritas convicii*, or the groſs immorality of which the purſuers were accuſed, and which the defender had undertaken to prove: *that it equally appeared from the ſame ſtatement, that ſhe was not adduced for the purpoſe of corroborating the teſtimony of any of the preceding witneſſes*, concerning any particular converſations, either with Charlotte Whiffin, or any other perſon alluded to in their depoſitions: that neither was it, nor could it be, aſſerted, that this witneſs was brought to corroborate the teſtimony of Charlotte Whiffin, who, though a witneſs for the defender, had pointedly contradicted every material fact ſtated in the condeſcendence to be within her knowledge: that, at laſt, it was plainly confeſſed, that the whole purpoſe of calling the witneſs now offered, was to examine her as to ſome alleged converſations with Charlotte Whiffin, none of the former witneſſes being preſent, in which it was ſuppoſed the ſaid Charlotte might have expreſſed herſelf differently from the manner in which ſhe had lately expreſſed

herſelf upon oath; and that it ſeemed to be fully admitted, that the propoſed witneſs knew nothing, of her own knowledge, tending to inſtruct the facts averred in the condeſcendence: that it was, therefore, objected to the witneſs, 1*ſt*, That it was altogether unprecedented for a party, after adducing a witneſs in ſupport of his caſe, to call another witneſs, for no other purpoſe but to diſcredit the depoſition of that witneſs: 2*d*, That the evidence propoſed was of the very worſt ſort of *hearſay*, reſolving into an attempt to prove a fact by hearſay, not merely without the beſt evidence of that alleged fact, but in direct contradiction to the beſt evidence moſt pointedly denying it: 3*d*, That the propoſed examination would be of moſt dangerous effect, both in this caſe, and as a precedent: that Charlotte Whiffin had already ſworn, that ſhe neither ſaw, heard, nor knew, any of the things which was alleged in the condeſcendence ſhe had ſeen, known, or ſaid; and that ſhe had alſo ſworn, that ſhe never ſaid any ſuch thing, either to the propoſed witneſs, or to any other perſon: that, therefore, to examine the perſon now mentioned, for no purpoſe but that acknowledged, would be to give occaſion to perjury, without adding one particle of legal evidence concerning the alleged *facts* on which the caſe reſts: that, farther, it would introduce a very extraordinary and improper practice, as, in the event of this woman ſwearing that any thing had been ſaid to her in contradiction of the teſtimony of Charlotte Whiffin, it would become neceſſary, in like manner, to inveſtigate *her* character and credit: that, without ſaying any thing more particularly applicable to this individual, (though the purſuers abſtained from it, from no want of means or opportunity), it was obvious, that the ſort of inquiry here attempted would admit hearſay examinations *ad infinitum*, as it would obviouſly be equally competent to diſcredit the report of one converſation given by one witneſs, by the depoſition of another witneſs to another converſation, or ſecond hearſay of that witneſs; but that ſuch a courſe of evidence never was heard of in this Court; and the purſuers, being confident that their Lordſhips would never allow it, humbly ſubmitted the objection to be inſuperable: that it would be heard, indeed, if, after the infamous facts alleged againſt them were poſitively diſproved by the witneſſes to whoſe knowledge the defender had referred for evidence of them, ſhe ſhould be permitted to go into an examination of hearſay to contradict that evidence.

No. II.

OBJECTION to Miſs MARGARET DUNBAR.

That ſhe is confeſſedly the grand-daughter of the defender by lawful birth: that it is a ſettled rule of the law of Scotland, that a grand-daughter is not admiſſible as a witneſs for her grand-mother: that if it be alleged that in this caſe there is *penuria teſtium*, it is anſwered, 1*ſt*, That in fact there is no *penuria*; but, 2*d*, That, at any rate, if there be a *penuria*, it is a *penuria* created by the defender herſelf; and that the purſuers take it to be the cleareſt matter in the world, that no perſon can be entitled to propagate a calumny, more eſpecially of the infamous nature here in queſtion, upon the authority of a witneſs not admiſſible by the ordinary rules of law, to prove in favour of that perſon; and, if the defender choſe to propagate a calumny on the authority of her grand-daughter, ſhe cannot plead a *penuria teſtium*, in order to admit her as a witneſs.

SECOND DIVISION.

JUNE 10. 1811.

ANS.—Misses WOODS & PIRIE,
TO THE
PET.—Lady CUMMING GORDON.

Ja'. Balfour, W. S. Agent for Respt'.
Mackenzie & Innes, Agents for Pet'.

Mr MACKENZIE, Clerk.

ANSWERS

FOR

Miſs MARIANNE WOODS and Miſs JANE PIRIE;

TO THE

PETITION of Lady CUMMING GORDON of Altyre.

YOUR Lordſhips have refuſed this petition, in ſo far as the defender reclaims againſt the deciſion of the Lords Commiſſioners on the objection to Margaret Little as a witneſs. But you have appointed it to be anſwered, in ſo far as it relates to the objection to Miſs Margaret Dunbar.

Perhaps, if the facts or alleged circumſtances, on which the petitioner propoſed to examine Miſs Dunbar, had been as diſtinctly ſtated as thoſe intended to be made the ſubject of Margaret Little's examination; and if the interlocutor reclaimed againſt had been recited *in terminis;* your Lordſhips might not have thought it neceſſary to require an anſwer.

Your Lordſhips have taken too much trouble to make yourſelves intimately acquainted with this cauſe, to render any narrative whatever neceſſary, in ſupporting the objection to the witneſs offered.

But it is moſt important always to keep in view, *what the issue is*, joined between the parties in this proof; becauſe the petitioner has taken every opportunity of endeavouring to ſhift it. The purſuers complain, in this action, that the defender did propagate a moſt ſhocking calumny, accuſing them of a crime ſo horrible and infamous, that the criminal records of the whole world are in vain ſearched for any example of it. The defence is, *not* a plea of *bona fides*—or of *reasonable grounds for believing* a ſtatement admitted to be falſe: The defence is, a direct juſtification, *by an offer to prove the fact*, that the purſuers *were guilty of that very abominable crime*, of which the defender in the ſtory propagated by her had accuſed them. The iſſue, therefore, is nothing *less* than this: it is not an iſſue upon other improprieties in the purſuers; nor upon reaſonable grounds of belief in the defender; but an iſſue upon the truth or falſehood of the fact averred by the defender, that the purſuers were guilty of the crime imputed to them by the calumny.

This, therefore, being the point at iſſue, from which it is utterly impoſſible for the defender to eſcape; the evidence offered muſt always be conſidered, in reference to the object of the defender to prove the *veritas convicii*—the truth of the calumny, and nothing elſe.

It was originally ſtated to the Lord Ordinary, that the defender had received *all* her information from Miſs Jane Cumming. This, however, was afterwards ſtated to be a miſtake; and it was aſſerted, that ſhe had alſo information indirectly from another young lady, who has been already examined. It is very plain, however, that the defender relied upon the details of Miſs Cumming; and accordingly ſhe very ſoon found it neceſſary to offer her as a witneſs, in order to ſupport her juſtification upon the fact.

In anſwering the objection to Miſs Cumming's admiſſibility, as being grandaughter of the defender, the defender reſted principally upon a diſtinction, founded on the ſuppoſition that ſhe was *illegitimate*; and at leaſt ſeveral of your Lordſhips put your opinions on that point *alone*. Miſs Cumming, however, was ſtated in the condeſcendence to have had direct knowledge by the evidence of her ſenſes, of the very fact which it was incumbent on

the

the petitioner to prove; and upon that circumſtance, a plea of *penuria testium* was alſo founded.

The defender was thus allowed to examine her own granddaughter, being a natural child. The reſpondents have nothing to ſay here upon her evidence. Only, the petitioner has no right to *assume*, what yet remains to be ſeen, and the reſpondents do moſt confidently deny, that it at all ſupported the ſtatement in the condeſcendence, or the other averments of the defender.

The defender has examined five other witneſſes—all for the purpoſe of ſupporting or confirming the ſame general aſſertion of *the truth of the libel*. And at laſt, feeling, the reſpondents preſume, the inſufficiency or incredibility of her evidence, ſhe offers in ſupport of it Miſs Margaret Dunbar, *her own grandaughter by lawful birth;* and ſhe reſiſts the admitted objection to which ſhe is liable, by a plea of *penuria testium*, and the allegation that the facts to be proved are *in re domestica*.

Upon adviſing a debate upon the admiſſibility of Miſs Dunbar, your Lordſhips, the Commiſſioners, gave this deliverance: 'The Mar. 26. 1811
'Judges having deliberated on the ſame, find, That the ſubject-'matter of the action, being an alleged publication of a ſlande-'rous ſtory to the injury of the purſuers, and the ſpecial defence 'ſtated againſt that action, being a juſtification founded on the truth 'of the facts ſo charged to have been publiſhed by the defender, 'do neither of them ariſe from or reſult into facts and circum-'ſtances, which happened *intra familiam* of the defender, and that 'there is no room for an exception from the ordinary rules of 'evidence in proving the defence, and therefore ſuſtain the ob-'jection to the admiſſibility of Miſs Margaret Dunbar, as being 'the legitimate grandaughter of the defender.'

The reſpondents ſubmit, that this interlocutor expreſſes moſt ſufficient grounds for adhering to it. And though they do not mean to ſtate any objection on that ground, they certainly did not underſtand, when the defender declared her proof concluded (with one reſervation only, as to the alleged recommendation of the ſchool,) before that of the purſuers began, that the admiſſibility of Miſs Dunbar was afterwards to be inſiſted on: They muſt only obſerve, that they do not know, what farther inveſtigations her examination might render neceſſary.

The petitioner has not ſtated in her petition, what the facts are, which ſhe propoſes to prove by Miſs Dunbar; although, where her whole plea of admiſſibility reſts upon the allegation of *penuria*, this

this appears to be peculiarly neceſſary. She offers Miſs Dunbar generally as a witneſs in the cauſe.

It is not ſtated in the condeſcendence, that this young lady has any *direct* knowledge concerning the facts, upon which the aſſertion of the truth of the libel is founded. Such knowledge was only imputed to three perſons, Miſs Cumming, Miſs Munro, and Charlotte Whiffin. And indeed, when it is recollected, that Miſs Dunbar was *only a day-boarder*, and *did not ſleep at the ſchool*, it is very improbable that ſhe can know any thing of the matter *of her own knowledge*.

If the allegation, therefore, of an *occult fact*, is meant to be applied to the fact charged by the *veritas convicii*, the petitioner will not ſay, that it is for the purpoſe of proving it from her own knowledge, that this witneſs is offered. She muſt be brought to prove, either, 1. *Converſations* with or among the other witneſſes: or, 2. Circumſtances alleged to have taken place in the ſchool; or, 3. Circumſtances connected with the publication of the ſcandal. And it is ſubmitted, that, upon the ſimpleſt view of the matter, it is totally impoſſible to maintain, that the witneſs is admiſſible to any of theſe points, upon the allegation of *penuria teſtium*. But the reſpondents hope to ſhew, that the plea of *penuria teſtium* is not receivable in ſuch a caſe, and that at any rate there is neither a legal nor an actual *penuria* in this caſe.

The petitioner is under the neceſſity of admitting generally the objection, that, being the defender's grandaughter, the witneſs is not admiſſible at her inſtance. And although it is no doubt true, as the defender tells your Lordſhips, that the law as to objections to witneſſes has been conſiderably relaxed ſince the time of Mackenzie, it is not obvious, what influence this can have on the deciſion, as long as it is and muſt be admitted, that *now*, and *at this very day*, it is generally a good objection to a witneſs, that ſhe is grandaughter of the party. But the reſpondents muſt be allowed to obſerve, that, in making the quotation given from Lord Stair, the meaning and effect of it is materially changed by not ſtating the connection of the paragraph. Lord Stair has enumerated, in the preceding ſection, the objections to witneſſes, which are *ſimply* good, viz. 1. Pupillarity; 2. Fatuity or furioſity; 3. Notorious profligacy of character; 4. Huſbands and wives, *parents and children*; 5. Uncles and aunts, nephews and nieces, brothers and ſiſters; 6. Enmity to the other party; and, 7. Intereſt in the iſſue. After enumerating *theſe* objections, he introduces the paſſage here quoted, in a *ſeparate* ſection, not in reference to *any*

of

of them, but to thoſe *which follow*, implying no concluſive objection, or moral inhability. And accordingly, he immediately proceeds, 'Therefore, where competent evidence is given, that 'other witneſſes might be had, there are many grounds allowable to refuſe thoſe who are adduced, with ſuſpicion of being 'biaſſed, till others who are without ſuſpicion be examined, As 'First, Poverty,' &c. Then follows another enumeration, viz. 2. Perſons under threats; 3. Partial counſel; 4. Being prompted, &c.; 5. Ultroneous witneſſes; 6. Servants and dependents; 7. Moveable tenants; 8. Advocates, agents, &c.; 9. Goodbrothers and goodſiſters; 10. Friendſhip or intimacy; 11. Women. After all this, his Lordſhip adds, 'But in all *theſe* objections againſt Sect. 10. 'witneſſes, *where they are not ſimply excluded*, or have intereſt in the 'cauſe, where they may gain or loſe, or in near *collateral* relation, 'or enmity; witneſſes ſhould not be rejected, unleſs other wit-'neſſes unſuſpect could be found.' Your Lordſhips will eaſily ſee from this, that Stair is very far from ſaying, that the objection ariſing from the relation of *parent and child* can be done away, merely by alleging, that in fact other witneſſes cannot be obtained: This remark relates entirely to a very different claſs of objections.

Mr Erſkine, in his ſtatement as to the caſe of *penuria teſtium*, does not ſay that in any caſe the *child* can be a witneſs for the *parent*. He ſays only, 'In occult or more private facts, where there muſt 'in moſt caſes be a penury of unexceptionable witneſſes, *ſome* of 'the diſqualifications above mentioned are overlooked;' and, as the only examples, he mentions *domeſtic ſervants*, and, on the authority of the caſe of Barber, now *diſcredited*, brothers and ſiſters, in the caſe of clandeſtine marriage.

As to Lord Bankton, again, his obſervation, taken generally, proves too much; as it would admit every perſon without exception, even thoſe directly intereſted in the iſſue, or infamous by ſentence. But he refers to nothing but the ſame caſe of *Barber*, and another applicable to women of general bad character.

The reſpondents humbly ſubmit, generally, that the rule of receiving witneſſes otherwiſe inadmiſſible, on the ground of *penuria teſtium*, does not apply merely where it can be alleged that in *fact* there is a difficulty of finding evidence. The difficulty muſt lie in the nature of the thing; and the conſequence of the defect of evidence muſt be in no degree imputable to the fault or voluntary act of the party who offers the witneſs. The caſes in 1610, and 1679, mentioned by the defender, are ſo ſhortly reported, that no-

thing can be known of them. But in that of Brown againſt Stevenſon, there was a real *penuria*, ariſing from the antiquity of the fact; and in that of Cuming, the fact was clearly *in re domestica* of *both* the parties.

As to the caſe of Cameron againſt Malcom, it appears from the report, that it was a declarator of marriage; and the man '*had* '*made a ſort of appeal to the evidence of the lady's mother.*' And beſides this, the crime of *abduction* was alleged, where it is evident there was nothing voluntary, but a real *penuria*, ariſing from the nature of the act of the other party.

But the reſpondents have to beg the attention of your Lordſhips to caſes *later* than *all* thoſe referred to by the petitioner, which appear to them, with deference, to be very deciſive on the point. For the defender is miſtaken in ſuppoſing the caſe of Dalziel againſt Richmond to ſtand ſingle.

The reſpondents ſhall preſent the report of the caſe of *Dalziel* entire: And as it was decided very ſolemnly, and *expreſsly* with a view to its being a regulating *precedent*, it appears to be doubly important.

Dalziel againſt Richmond, July 10. 1792. 'The evidence 'of the mother 'and ſiſter, in a 'declarator of 'marriage, in- 'admiſſible'

'In an action of declarator of marriage, Margaret Dalziel, the 'purſuer, adduced, beſides other witneſſes, her father, mother 'and ſiſter. The Commiſſaries admitted the evidence of the 'father; and the defender having acquieſced in the judgment, 'he was examined. Other witneſſes were alſo examined, but 'their teſtimony proved nothing deciſive of the queſtion. The 'Commiſſaries, then, after a ſtrenuous oppoſition, likewiſe found 'the evidence of the mother and ſiſter to be admiſſible: Upon 'which the defender preſented a bill of advocation, and

'Pleaded: When perſons nearly related to a party appear as 'witneſſes in his behalf, they approach, more or leſs, according 'as the relation is cloſe, and of conſequence the intereſt ſtrong, 'to the ſituation of a man bearing evidence in his own favour. 'It never was, therefore, or could be made a queſtion, whether 'ſuch were legal or impartial witneſſes. The only doubt was, if 'in caſes where a *penuria teſtium* was the reſult of the circum'ſtances, their teſtimony could be at all received, not as proper 'parole proof, but rather as the nature of real evidence leading 'to corroborate or illuſtrate what antecedently had been in ſome 'degree, though imperfectly, proved. Of this kind of evidence, 'then, the ſole efficacy conſiſts in its having a relation to ſuch 'antecedent proof. But in the preſent caſe, there exiſts no ſort

'of

'of previous evidence of the purſuer's allegation; the teſtimony 'of her father being juſtly diſregarded.

'Anſwered: Clandeſtine marriages are not put *extra commercium*. 'Such evidence, then, as is conſiſtent with the nature of the tranſ-'action, muſt be admitted with regard to them. As the ſecret 'will naturally be entruſted to the near relations of the parties, 'they of courſe become neceſſary witneſſes. Accordingly, in the 'caſe of Sibilla Barber againſt Stewart, the brother and ſiſters of 'the purſuer of a proceſs of adherence, were received as witneſſes '*cum nota*; 31ſt July 1732, Moriſon's Dict. No. 161. p. 16742. 'And in the later caſe of Cameron againſt Malcom, in the year '1756, when a declarator of marriage was brought by the man, 'and a declarator of freedom by the lady, the brother and ſiſter 'of the latter were received as witneſſes in her behalf.

'Replied: With reſpect to the caſe of Cameron and Malcom, 'the purſuer there, by the nature of his plea, made a ſort of ap-'peal to the evidence of the defender's mother. Beſides, the 'counter action went on the allegation of the crime of abduc-'tion.

'The bill of advocation having been paſſed, the Lord Ordina-'ry, before whom the cauſe afterwards came, took it to report on 'informations, when

'The Court ſtrongly expreſſed their ſenſe of the importance of 'the caſe in point of precedent. No temptation to perjury, it 'was obſerved, could operate more irreſiſtibly than that to which 'parents would be liable, if the fate of their children were made 'to depend on their teſtimony in a proceſs of declarator of mar-'riage, an idea in every view alarming to ſociety. The objec-'tion to a brother or a ſiſter's evidence, in ſimilar circumſtances, 'was conſidered as alſo inſurmountable.

'To the deciſion in the caſe of Barber, little reſpect ſeemed to 'be paid; the diſtinction having been made betwixt that *penuria* '*testium* which neceſſarily reſults from the ſituation of the party 'requiring evidence, as where a crime has been committed againſt 'him, of which the caſe of Malcom was an example, and ſuch a '*penuria* as ariſes *from his own fault*.'

The Lords 'remitted the cauſe to the Commiſſaries, with an 'inſtruction to alter their interlocutor, and to refuſe to admit any 'of the witneſſes.'

Your Lordſhips ſee the importance that was attached to the point. The defender ſays, that 'in the caſe of a clandeſtine mar-'riage, the purſuer, who has been guilty of a legal offence, by en-

'tering

'tering into it, ought not to be allowed to plead *penuria testium*, for 'sibi imputet that there was *penuria*.' If this be the *ratio*, your Lordships will consider, whether calumnies or stories to the ruin of individuals are *more* encouraged by law than clandestine marriages; and surely, if there be any *penuria* here, it is a *penuria* which the defender has produced *by her own fault: Sibi imputet*, that she has propagated the libel, upon the authority of witnesses not admissible in her behalf; and 'no general rule of evidence 'ought to be suspended in her favour.'

In truth, however, though there were arguments brought into that case, from the nature of clandestine marriages, the case was decided generally upon this, that parents or children, or other very near relations, could not be received for one another, merely on the allegation of a want of other witnesses, where, from the nature of the fact alleged, there might have been others, or where it was by the fault of the party that such an examination became necessary.

Accordingly, the precedent thus established, was followed in the case of Bell against King, January 21. 1797, which is entitled:

Jan. 21. 1797. Bell *versus* King.

'The defender, in an action of *divorce*, cannot adduce her mo-'ther, brother, or sister, as witnesses.'

'In an action of divorce at the instance of James Bell, against 'Isobel King, she proposed to adduce her *mother*, *brother* and '*sister*, as witnesses. She wished in particular to disprove a mate-'rial circumstance sworn to by a single witness for the pursuer, 'which she alleged to be false, and her brother was the only per-'son who had access to know it to be so.

'The pursuer having opposed the examination of these wit-'nesses, the Commissaries *sustained the objection.*

'The defender presented a bill of advocation against the judg-'ment, which the Lord Ordinary took to report.

'The Court thought the interlocutor of the Commissaries right. 'The opinions delivered were the same in substance with those 'stated in the report, July 10. 1790, Dalyell against Richmond. 'It was also observed, that the fact which the defender was de-'sirous of disproving by her brother's evidence, being sworn to 'by one witness only, could not materially injure her cause.

'The Lords *unanimously* refused the bill.'

It will hardly be said, that there is in this case any thing more occult or private, than the fact of adultery *intra familiam*, or the circumstances

circumſtances connected with ſuch a charge. Yet even in direct relation to that alleged fact, and in defence to it, the near relations of the party were rejected as witneſſes: And the caſe now quoted is the *latest* caſe on the ſubject in the books of reports.

The reſpondents, indeed, have to acknowledge their obligations to the petitioner, for having furniſhed them with a caſe much older, which notwithſtanding ſeems to be in point. They mean the caſe of Stirling againſt Hamilton, July 11. 1704. It was a declarator of marriage and adherence, in which the woman offered her *father*, brothers and ſiſters, as witneſſes. The fact was alleged to be *intra familiam:* But it was argued, 'That the marriage 'being private, there was *penuria teſtium*, and no others were pre-'ſent. *Replied:* Clandeſtine marriages are not to be encouraged; 'and if people will go in that manner, *they ought at least to ad-'hibit indifferent unconcerned witneſſes.* The Commiſſaries re-'pelled the objection, and admitted them *cum nota:*' In an advocation, there was a great deal of diſcuſſion about the competency of advocating: But, it being held competent as to this point, the Lords, 'Seeing Grange had been ſeveral years married, and had 'children, and was long in the poſſeſſion undiſturbed and un-'queſtioned by this Stirling's claim; *and that it was diſſonant 'to the common principles of law, to prove her marriage by her own 'neareſt relations only;* therefore they advocated the cauſe from 'the Commiſſaries only *quoad* that point of the inhability of the 'witneſſes,' &c.

It is ſubmitted, then, that, upon a fair view of the authorities, there is no pretence for this examination, even if there were a real *penuria*, and the matter were truly *in re domeſtica* of the defender. Indeed, it is believed, many other caſes have occurred, in which ſuch propoſals have been attempted, although, from the notoriety of the general rule, they do not appear as reported caſes. In the caſe of Balbougie, for example, Provoſt Cunningham—the perſon who certainly knew beſt the direct fact to be proved—was never examined as a witneſs, although he was at laſt judicially examined as a party.

But the reſpondents would now wiſh more particularly to conſider the point, upon the *ratio* aſſigned in the deliverance of your Lordſhips the Commiſſioners, which evidently contains the moſt ſolid merits of the queſtion.

To entitle a party to get the better of the ordinary rules of evidence, he muſt at leaſt ſhew, that the facts to which he wiſhes to

call a witneſs generally incompetent, were ſuch as neceſſarily occurred *intra familiam*, and where he could not reaſonably be expected to be provided with other evidence. But the whole facts involved in this cauſe, are, 1. The publication of the libel, as averred by the reſpondents: and, 2. The juſtification, by the averment of the *veritas convicii* by the defender. The queſtion is, whether, upon either of theſe points, it can be ſaid, that the ſubject-matter of the proof reſolves into facts or circumſtances *intra familiam* of *the defender*, ſo as to entitle her to bring her own children as witneſſes.

With regard to the publication of the libel, it is generally admitted. But independent of all admiſſions, the fact, true or not, is *neceſſarily of a public nature*, entirely out of the affairs of the defender's family. And accordingly, it has been proved both by writings, and by a number of other witneſſes: Or, at all events, a number of witneſſes having ſufficient cauſe of knowledge have been examined on the ſubject. It is preſumed, therefore, that the defender cannot mean to allege a right of examining her granddaughter, on the ground of *penuria*, with regard to any matter connected with the charge of having publiſhed the libel.

The fact, upon which the *juſtification* reſts, is alleged to have taken place, not in the houſe of the defender, or in any houſe where ſhe and her daughters or relations or ſervants alone reſided, but in the houſe of the purſuers. In that houſe, there were conſtantly reſident, beſides the grandaughters of the defender, at leaſt *ſeven* or *eight* perſons capable of being examined, ſeveral of them no way connected with either party; and therefore, as the fact averred in the juſtification did not take place in the houſe or in the family of the defender, ſo, if it ever happened, there appears to be no reaſon, why Miſs Margaret Dunbar ſhould neceſſarily have more means of knowing it than any of the other perſons. If the reſpondents did any thing to juſtify the cruel ſlander raiſed againſt them, they muſt have done it, not in the family of the defender, but in *their own* family—among ladies collected from various families—among their own ſervants or viſitors. All theſe are acceſſible to the defender, except her own *grandaughter*. Many of them have been examined; and yet, after all, the *defender* ſays that her granddaughter muſt be admitted, though otherwiſe not competent, upon pretence that the matter in queſtion is *in re domeſtica* of *her*. The reſpondents cannot imagine a more palpable

miſconception

miſconception of the indulgence given on account of *penuria teſtium*. If the reſpondents had forced their way into the houſe of the defender, and there committed an aſſault upon her, they can ſee that her children or ſervants might poſſibly have been received as witneſſes for her *sub nota*. But if the defender were charging them with having aſſaulted her *in their own houſe*, ſurrounded by the ſcholars, ſervants and other perſons, it would appear rather ſingular that ſhe ſhould fix upon her own children as witneſſes, upon a pretence of a *penuria teſtium*.

The object, indeed, avowedly is and muſt be, to examine Miſs Dunbar, either as to incidental circumſtances which are alleged to have happened in the ſchool, or as to converſations with Miſs Cumming, Miſs Munro, or Charlotte Whiffin. As to the firſt, where is the *penuria* as to facts happening in a large ſchool? At leaſt *ſix* perſons conſtantly reſiding there have been already examined;—and there are at leaſt *two* more examinable, whom the defender did not think fit to offer. The thing ſeems quite abſurd. It may be ſaid, indeed, that theſe others perſons, or ſome of them, do not happen to know the particular circumſtances to be proved by Miſs Dunbar. This, however, inſtead of ſupporting the argument, forms the very ſubſtance of the objection to the witneſs. If the alleged facts are *not true*, *nobody* can know them; and the objection is, to putting a witneſs ſo nearly related to the party, in a ſituation where there is a ſtrong temptation to deviate from the truth, in circumſtances, where, if the things had happened, it is *natural* to ſuppoſe that other perſons muſt have known them.

But it is preſumed the real object is to prove *converſations* only, which in this cauſe the defender always repreſents as *facts*. A good deal of diſcuſſion has already taken place, upon the examination of other witneſſes to ſuch points. But it is apprehended, that even thoſe diſcuſſions muſt tend to ſhew the total inadmiſſibility of the preſent witneſs.

If the meaning be, to prove converſations in which Charlotte participated, in order to contradict her and confirm other witneſſes, there is one queſtion which it is thought muſt ſettle the point. Charlotte was the *defender's* witneſs. Now, if Charlotte had ſworn to theſe converſations, ſo as to confirm all that Miſs. Cumming ſaid, *would the defender have held the fact, that ſuch converſations took place, to be proved?* If ſhe would, then there cannot poſſibly

poſſibly be a *penuria testium*; becauſe there are *admissible* witneſſes, whoſe teſtimony in favour of the averment would be *sufficient*. But the plea juſt comes to be, that, becauſe the *competent* witneſs has *disproved* the aſſertion, the force of her teſtimony muſt be removed or weakened by one who is *inadmissible*.

If the attempt is to prove converſations with Charlotte alone, there is the ſame anſwer; and the judgment in the caſe of Margaret Little applies *a fortiori* to Miſs Dunbar.

But if again it ſhall be ſaid, that Miſs Dunbar is merely to prove converſations with Miſs Cumming or Miſs Munro, in order to confirm their credit; the reſpondents ſubmit, in the firſt place, that it cannot be ſaid that there is in that matter any *penuria*, after ſo many witneſſes have been examined to the ſame point. But beſides this, the reſpondents muſt beg leave to demur to the principle of this plea: It ſeems to be not very intelligible, to examine an *inadmissible* witneſs, merely to *confirm* the credit of *several* others who have been received as *competent*, upon the allegation of a *penuria testium*. The defender indeed appears to think, that, whatever number of witneſſes may be acceſſible, or have been examined, ſhe is always entitled to ſay there is a *penuria testium*, if ſhe has *not proved her case* by thoſe witneſſes whom ſhe has. Thoſe witneſſes who have been examined, have at leaſt been conſidered as legally admiſſible; and from the number and ſituations of them, it may be ſuppoſed at preſent, that, if the petitioners' ſtatements were true, they would have been ſufficient to prove them. It is not even ſaid, that Miſs Dunbar had any means of knowledge, better than or different from any of them. But, with ſubmiſſion, whatever may be the competency of examining one witneſs, admiſſible in himſelf, either to contradict or confirm another, by reporting converſations, it ſeems to be quite impoſſible to allege a *penuria testium* in ſuch a caſe, in order to admit a witneſs, altogether incompetent in other circumſtances: For, beſides that there is evidently no *penuria* in fact upon the real ſubject-matter of the inveſtigation, the reſpondents cannot ſee what there is in the ſuppoſed *converſations* themſelves, that neceſſarily, and from the nature of them, creates a *penuria teſtium*.

In ſhort, in whatever view this propoſed examination is regarded, there appears to be no pretence for ſaying, that the fact alleged is *intra familiam* of the *defender*, or that there is any *penuria* either in law or fact.

But

But the reſpondents have ſtill to ſubmit another view of great importance. The reſpondents are inſiſting againſt the defender for a libel,—for having publiſhed and propagated a falſe ſtory, charging them with an infamous crime. The defender juſtifies herſelf for having publiſhed it, by aſſerting that it is true; and ſhe has been allowed to prove it. But your Lordſhips will obſerve, that the publication of ſuch a libel was a *voluntary* act on the part of the defender; and ſhe was bound to know it by ſuch evidence as your Lordſhips would receive, before ſhe took it upon her to ſend into the world a ſtory which, true or *falſe*, was to heap ruin on two individuals. The reſpondents would ſubmit the propoſition generally, that no perſon can be entitled to propagate a calumnious ſtory to the injury of his neighbour, and then plead in defence to an action a *penuria teſtium:* If there was a *penuria teſtium*, he ought to have heſitated, firſt of all in believing, but at all events in propagating, the ſcandal. Indeed, every argument uſed upon this point aſſumes the thing to be proved,—that the ſtatement is true. But, if this mode of proving the *veritas convicii* ſhall be admitted, it will be of no conſequence how falſe or malicious the accuſation is: A man, who has really *done* an injury to another, accuſes him before the public of a crime, ſo placed as to be known only to himſelf, his ſon, or his father, and his brother: It is in vain to ſay it is falſe, becauſe he offers to prove it: It is in vain to object, that his father, or ſon, or brother, is an inadmiſſible witneſs; for all this is ſilenced by the allegation of *penuria teſtium:* Nothing can be conceived ſo perfectly calculated to ſyſtematiſe calumny, and ſecure the ſlanderer from all reſponſibility. But it is humbly ſubmitted, that as every man is bound to regard the character of his neighbour, ſo when he takes upon him to utter a groſs imputation upon it, it is his own voluntary act, in which he can only juſtify himſelf upon the ordinary rules of law and evidence: There is no favour due to him: His neighbour has the ſame right that he has to ſtand fair in the eyes of the world, till by *legal* evidence he is proved to be guilty: And he who ventures, at his own hand, to break through the moſt valuable preſumption of innocence, commits himſelf voluntarily upon the legal evidence of which he pretends to be poſſeſſed.

The petitioner ſays, that it is a difficult queſtion in morals, whether ſhe was entitled or bound, upon the authority of her granddaughters, to inform others of what they had told her. The re-

 ſpondents

ſpondents will not preſume to reſolve any queſtion of conſcience or morals for the defender. But it is impoſſible not to obſerve, that all the reflections of the petitioner on that queſtion, are engroſſed by a ſuppoſed intereſt of her children and others, without any opening being left for the intereſt of two innocent individuals. Their *ruin*, though the ſtory ſhould be utterly falſe, ſeems to be contemplated as nothing in the ſcale. They can only ſay, that, in their humble apprehenſion, the intereſt which *they* had in the matter, was preciſely the ſubject which ſhould have been *moſt* preſent to the petitioner's thoughts, before ſhe ventured to publiſh ſuch a calumny to their prejudice. The defender, inſtead of credulouſly receiving the ſtories of her grandaughters, ought to have been in a great degree ſuſpicious and incredulous; and nothing but evidence, to which ſhe could ſet her face in the world, without aſking favour or indulgence, or the relaxation of the common rules of evidence, ſhould have led her to take a ſtep that carried with it ſuch certain ruin to two perſons, hitherto of fair characters, and againſt whom ſhe pretended no other complaint.

If the petitioner felt otherwiſe upon this queſtion of *morals*, the reſpondents muſt leave that with herſelf. They think, however, they are ſure that your Lordſhips will hold, that, as anſwerable to the law of the country, ſhe at leaſt judged and acted at her own riſk and peril. She took *upon herſelf* the inconvenience or difficulty, which might ariſe, from having in any degree acted upon the evidence of her grandaughter, whom ſhe knew, or ought to have known, not to be admiſſible as a witneſs for her. If ſhe thought herſelf bound or at liberty to act on ſuch grounds, there is no help for it. But it was her own voluntary act; ſhe cannot found on it a plea of favour or neceſſity; but muſt take the law as it is for other caſes, and either prove her averment according to that law, or ſubmit to the conſequence of her own raſhneſs.

The petitioner ſays, that if ſhe were proſecuting in the Criminal Court, her grandaughter would be received. But, with ſubmiſſion, there is no analogy whatever in the two caſes. This is a *civil* action, in which the reſpondents accuſe the petitioner of having committed a grievous wrong againſt them: They ſay ſhe has circulated a *falſe* accuſation againſt them. Was the petitioner entitled to circulate any injurious accuſation, as an avenger of the public intereſt? Or is ſhe to defend herſelf againſt the conſequence of propagating a ruinous libel, by the evidence of her children, who in law are conſidered to be little better, as witneſſes for her,

than

than ſhe herſelf would be? The ſame might be ſaid in *every* caſe of libel: but it would make little impreſſion to obtain the admiſſion of incompetent evidence.

The reſpondents have conſidered the point more at length than they originally intended; not ſo much from any anxiety about what Miſs Dunbar can ſay, if examined, as on account of the importance of the point, and the delay which muſt be occaſioned by going into farther evidence.

In reſpect whereof, &c.

JAMES MONCREIFF.

June 25th 1811

Sustain
Polkemmet
Glenlee
Robertson
Newton

Repell
Meadowbank
Boyle
Justice Clerk

SECOND DIVISION.

JUNE 14. 1811.

STATE

Mi's MARIANNE WOODS,
& Miss JANE PIRIE,
AGAINST
Dame HELEN CUMMING GORDON.

STATE

OF THE PROCESS,

Miss MARIANNE WOODS, and Miss JANE PIRIE;

AGAINST

Dame HELEN CUMMING GORDON.

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STATE

SECOND DIVISION.

JUNE 14. 1811.

STATE

Miſs MARIANNE WOODS,
& Miſs JANE PIRIE,

AGAINST

Dame HELEN CUMMING GORDON.

JA. BALFOUR, W. S. Agent for Pursuers.
MACKENZIE & INNES, W. S. Agent for Defender.

Mr MACKENZIE, Clerk.

STATE

OF THE PROCESS,

Miss MARRIANNE WOODS, and Miss JANE PIRIE;

AGAINST

Dame HELEN CUMMING GORDON.

THE preſent action is INSISTED in at the inſtance of Miſs Ma- A
rianne Woods, and Miſs Jane Pirie, as individuals, and in partnerſhip as miſtreſſes of a boarding-ſchool at Drumſheugh, near Edinburgh, AGAINST Dame Helen Cumming Gordon, relict of the deceaſed Sir Alexander Cumming Gordon of Altyre and Gordonſtone, Baronet, and the ſummons MAKES MENTION, That the pur- B
ſuers having ſome time ago eſtabliſhed the ſaid boarding-ſchool for young ladies, were as ſucceſsful in the undertaking as they could deſire, having had put under their charge and tuition ten young ladies of moſt reſpectable families, and got the immediate promiſe of two more, which would have completed their eſtabliſhment, twelve C
being the number to which they had reſolved to reſtrict their ſchool: That within theſe few weeks paſt, the good name, character and reputation of the purſuers have been unjuſtly and cruelly defamed and injured by Dame Helen Cumming Gordon, relict of the deceaſed Sir Alexander Cumming Gordon of Altyre and Gordonſtone, D
Baronet, defender, by means of falſe, injurious and defamatory allegations and inſinuations, contained in cards written by her Ladyſhip to ſeveral of the parents, relations, or guardians of the

young ladies entruſted to the purſuers' care, and alſo by means of falſe, injurious and defamatory reports raiſed or propagated by the ſaid defender; which allegations, inſinuations and reports, were to the effect, that the purſuers had been guilty of ſome very improper or criminal conduct, which rendered them unfit to be truſted with the education of young ladies: And the ſaid Lady Cumming Gordon, defender, further, in very ſtrong terms, adviſed that the ſaid young ladies ſhould be immediately taken away from the purſuers' ſchool: That in conſequence of this injurious conduct of the defender, not only have the young ladies who had been entruſted to the purſuers' care, been taken away from their ſchool by their parents, relations or guardians, but the ſchool itſelf, upon which they ſolely depended for their future proſpects, has been entirely ruined, and their characters and reputations moſt deeply hurt and injured; and SUBSUMING, That although the purſuers have frequently deſired and required the ſaid Dame Helen Cumming Gordon to make them proper reparation for the injury they have thus ſuſtained, yet ſhe moſt unjuſtly refuſes, at leaſt delays ſo to do: Therefore CONCLUDING, That the ſaid Dame Helen Cumming Gordon ought and ſhould be decerned and ordained, by decree of the Lords of our Council and Seſſion, to make payment to the ſaid Miſs Marianne Woods, and Miſs Jane Pirie, purſuers, of the ſum of L. 10,000 Sterling, in name of damages, and as a ſolatium for the injury ſuſtained by them, and of the further ſum of L. 500 Sterling, or ſuch other ſum as our ſaid Lords ſhall modify in name of expences of proceſs, beſides the expence of extracting the decree to follow hereupon, conform to the laws and daily practice of Scotland, uſed and obſerved in the like caſes in all points, as is alleged.

The ſummons is dated and ſigneted the 27th November 1810, and is executed againſt the defender the ſame day; and the counſel for the defender having judicially paſſed from the *inducie* of ſaid ſummons, the ſame was called in Court, and given out to the defender's counſel to ſee, and was afterwards returned with the following DEFENCES, viz.:

Dec. 8. 1810.

Defences for Lady Gordon.

DEFENCES for Dame HELEN CUMMING GORDON, Relict of the deceaſed Sir Alexander Cumming Gordon of Altyre and Gordonſtone, Baronet; in the action againſt her at the inſtance of Miſs MARIANNE WOODS and Miſs JANE PIRIE, reſiding at Drumſheugh, near Edinburgh.

Miſs Pirie, ſiſter of the purſuer, Miſs Jane Pirie, was governeſs in the family of Sir Archibald Dunbar, Baronet, who is married

to the defender's daughter; in which ſituation ſhe conducted her- A
ſelf to the ſatisfaction of Sir Archibald and Lady Dunbar. On that account, and alſo becauſe ſhe had uniformly heard both the purſuers well ſpoken of, the defender felt an intereſt in their ſucceſs, when they eſtabliſhed a boarding-ſchool at Drumſheugh, and exerted herſelf in various ways to ſerve them. She not only placed three of B her own grandaughters under their care, but recommended them to the notice of many of her friends; and ſhe has reaſon to know, that ſolely, or chiefly, on that recommendation, ſeveral young ladies were ſent to their ſchool.

The defender lately diſcovered, to her regret and aſtoniſhment, C that the purſuers were unworthy of her good opinion, and had abuſed the truſt which ſhe repoſed in them. She learned, from unqueſtionable authority, that they practiſed together acts of groſs immorality and ſhameful indecency; and that their guilt was aggravated by the occaſional commiſſion of thoſe offences in the preſence D of young ladies entruſted to their charge.

After the defender was ſatisfied that the information which ſhe had received was correct, ſhe loſt not a moment in reſcuing her grandaughters from the contamination to which they were expoſed, by removing them from the purſuers' boarding-ſchool. She E likewiſe conſidered it her duty to acquaint the perſons to whom ſhe had particularly recommended this ſeminary, and who had ſent young ladies thither in conſequence, that ſhe no longer approved of it as a place of education. Being in one or two inſtances preſſed to diſcloſe the grounds of her opinion, ſhe ſtated, in general F terms, that ſhe had reaſon to believe that the conduct of the purſuers had been highly indelicate and improper.

The relevancy of this defence is indiſputable. The defender is ready to ſpecify the facts on which it reſts, with whatever minute- G neſs the Court may require; and to eſtabliſh them by competent and concluſive evidence. Under proteſtation to add and eik.

(Signed) GEO. CRANSTOUN.

Thereafter the ſaid action having, in courſe of the rolls, come H
to be called before the Lord Meadowbank, Ordinary in the Outer-Houſe, of this date, his Lordſhip, after hearing Mr Cranſtoun for Dec. 13. 1810.
the defender, Mr Gillies for the purſuers, and Mr Henry Erſkine and Mr John Clerk in reply, with ſhut doors, on the grounds of the action and defences, granted warrant for letters of diligence, I
at the purſuers' inſtance, againſt havers, for recovering ſuch letters and other writings as they may think neceſſary in ſupport of their libel.

Thereafter the cauſe was called before the Lord Ordinary, of this date, when his Lordſhip *circumduced* the term againſt both Jan. 16. 18
parties

parties, and appointed parties' procurators to be ready to debate at next calling. And the cauſe having been called before the Lord Ordinary, upon this date, and again argued by the ſame counſel as formerly, his Lordſhip pronounced the following interlocutor: 'The Lord Ordinary having heard parties' procurators on the grounds of the libel and defences, before anſwer, appoints the defender to ſtate in writing the facts of which ſhe craves to be allowed to give in a condeſcendence, and requeſts the counſel preparing ſuch ſtatement to tranſmit the ſame under ſeal to the Lord Ordinary.'

Jan. 19. 1811.

In obedience to this appointment, the defender lodged in proceſs, in the manner pointed out by the above interlocutor, the following Statement, viz.

Statement for Lady Gordon.

In this cauſe the Lord Ordinary, after an argument, was pleaſed to pronounce the following interlocutor: 'The Lord Ordinary having heard parties' procurators on the grounds of the libel and defences, before anſwer, appoints the defender to ſtate in writing the facts of which ſhe craves to be allowed to give in a condeſcendence; and requeſts the counſel preparing ſuch ſtatement, to tranſmit the ſame under ſeal to the Lord Ordinary.'

Jan. 19. 1811.

In obedience to this appointment, the following Statement is made on the part of Lady Cumming Gordon, the defender.

The defender's grandaughter, Miſs Jane Cumming, was born in India, and placed, in early infancy, in one of the moſt reſpectable boarding-ſchools in Calcutta. At the age of ſeven years, ſhe was ſent to this country, and has ſince reſided with the defender, except for about years, during which ſhe was boarded with Miſs Charles at Elgin, who had been previouſly governeſs in the defender's family, and who had educated all the defender's daughters.

In 1810, Miſs Cumming, who is now ſixteen years of age, was entruſted to the care of the purſuers, who had recently before ſet up a boarding-ſchool at Drumſheugh, and in whoſe ſucceſs the defender was much intereſted, the ſiſter of Miſs Pirie having been governeſs in her daughter Lady Dunbar's family.

The young ladies at the boarding-ſchool ſlept chiefly in two apartments; in one of which Miſs Pirie ſlept, and in the other Miſs Woods. Miſs Cumming was Miſs Pirie's bedfellow.

The defender left Edinburgh, for the ſummer, on the 1ſt of May 1810. After ſhe went away, Miſs Cumming was often diſturbed, during the night, by Miſs Pirie converſing with Miſs Woods, who came into bed with them; and theſe converſations were attended with ſtrange noiſes, and ſhakings of the bed.

One

One night Miſs Cumming was awaked by Miſs Pirie ſpeaking A
to Miſs Woods. Miſs Pirie was at that time in bed, and Miſs
Woods was ſtanding beſide it, and they were kiſſing each other.
Miſs Pirie ſaid, 'Oh, do it darling!' Miſs Woods anſwered, 'Not
'to-night, it would awake Miſs Cumming.' This raiſed Cum-
ming's curioſity, who lay awake, but pretended to be aſleep. B
In a little Miſs Woods came into bed, upon which Miſs Cumming
felt Miſs Pirie put down her hand, and lift up her ſhift, ſo that
Miſs Cumming felt her naked ſkin. Miſs Woods then lay above
Miſs Pirie; and when in that ſituation, ſaid, 'I would like better
'to have ſome one above me.' Miſs Woods then put down her C
hand, and they made a noiſe, which was a wet kind of noiſe, at-
tended with a ſhaking of the bed. Miſs Cumming, being diſguſt-
ed, could lie no longer without ſpeaking, and ſaid twice, 'Oh Miſs
'Pirie,' before the latter anſwered. At laſt Miſs Pirie ſaid, as if
newly awake, 'What?' Miſs Cumming ſaid, 'What ſh. kes the D
'bed?' Miſs Pirie replied, 'Nothing,' and covered herſelf with
the bed-clothes.

Miſs Cumming lay awake for a long time, complaining ſhe
could not ſleep. Miſs Pirie deſired her two or three times to turn
her face to the wall, and try to ſleep; and Miſs Pirie having at E
laſt turned herſelf, ſaid, 'Now you muſt turn, as I have turned;'
and ſhe covered Miſs Cumming with the clothes. Then Miſs
Woods went out of bed, and when ſhe had reached her own door,
Miſs Pirie coughed, that the opening of the door might not be
heard by Miſs Cumming, who, however, did hear it. In a little F
Miſs Woods was heard to cough, when Miſs Pirie ſaid, 'Oh this
'is Miſs Woods coughing, and I muſt go to her, poor ſoul;' and
ſhe went.

Next morning Miſs Cumming told what had happened, to Miſs
M—— a young lady of ſixteen years of age, who ſlept with Miſs G
Woods; and Miſs M—— informed Miſs Cumming, that a few
nights before, Miſs Pirie had been in Miſs Woods' bed, and ſhe
had obſerved the ſame motions, and the ſame ſhaking of the bed,
which Miſs Cumming had deſcribed.

Another night Miſs Cumming was awaked with a noiſe, and mo- H
tions as before deſcribed: at that time Miſs Woods was lying
above Miſs Pirie, and Miſs Pirie ſaid, 'Oh you are hurting me.'

Another time, when in the ſame ſituation, Miſs Cumming felt
them take up their ſhifts, and Miſs Pirie ſaid, 'Oh you are in the
'wrong place!' Miſs Woods ſaid, 'I know.' Miſs Pirie ſaid, I
'Why do you do it then?' Miſs Woods ſaid, 'For fun.'

Another night Miſs Cumming heard Miſs Woods ſay to Miſs
Pirie, when in the ſame ſituation, 'Am I hurting you?' Miſs Pi-

A rie ſaid, ‘ No;’ upon which Miſs Woods continued the motions, and when about to go away, ſaid, ‘ Good night, darling, ‘ good night, I think I have put you in a fair way to ſleep.’ To this Miſs Pirie replied, ‘ No ;’ and Miſs Woods again continued.

On many other occaſions, Miſs Cumming was ſenſible of their
B being both in bed with her, lying the one above the other, kiſſing and embracing. One night in particular, when this happened, Miſs Woods ſaid to Miſs Pirie, ‘ Now, darling, will you promiſe ‘ me one thing ?’ Miſs Pirie anſwered, ‘ I do not know what it is.’ Miſs Woods ſaid, ‘ Now, darling, will you promiſe me, that you
C ‘ will not take me in your arms, or come again into my bed, till ‘ the holidays.’ To this Miſs Pirie replied, ‘ I know I will not be ‘ able to keep it ;’ and ſhe did not promiſe. But Miſs Woods ſaid, ‘ I will not take you in my arms, or come to your bed, but you ‘ may kiſs me, and I will kiſs you ;’ and then ſhe left the room.

D During the ſummer holidays, Miſs Pirie and Miſs Woods ſlept together, and Miſs Cumming ſlept in a bed at the foot of their bed. In the night ſhe was often diſturbed with the ſhaking of their bed, and the noiſe they made.

Miſs Woods, as before mentioned, ſlept with Miſs ——. One
E night Miſs M—— was awaked by a noiſe in the bed, and day-light coming in, ſhe perceived that Miſs Pirie was alſo in the bed. She could not underſtand what they were doing ; but the bed was ſhaking, and Miſs Pirie was lying above Miſs Woods, and lay there a long time.

F Miſs M——’s family coming to town, ſhe told what had happened to a nurſe, adding, that ſhe felt very diſagreeable, and did not know what to do. Upon this the nurſe ſaid, ‘ Oh Miſs ! that’s ‘ dreadful, if you are ſure of that ; do you know they are worſe ‘ than beaſts, and deſerve to be burned ; if it ever happens again
G ‘ tell me, and ſpeak out, and let them know you notice it.’

In the courſe of the following week, Miſs Pirie one night came again to Miſs Woods’ bed, and the ſame ſcene was repeated. Miſs M—— coughed to ſhew ſhe was awake ; upon which Miſs Woods alſo began to cough, and deſired Miſs M—— to fetch her
H ſome water from the dreſſing-room, which Miſs M—— did, and as ſhe was returning, ſhe ſaw Miſs Pirie ruſh out of the room.

A ſervant-maid in the houſe repeatedly ſaw Miſs Woods and Miſs Pirie in improper ſituations, and uſing indecent familiarities with each other.

I The morning after Miſs M—— was firſt diſturbed, as before related, ſhe roſe earlier than uſual, and was firſt in the ſchool-room. The maid alluded to was doing up the room, to whom

Miſs

Miſs M—— ſaid that ſhe had ſlept ill, and had a dreadful night. A
The maid underſtood her at once, and ſaid, laughing, 'It is a pity
'they cannot get a man, but that they will never get.' Two or
three of the oldeſt girls came down, ſoon after, and all joined in
ſpeaking of what had happened. The maid informed them, that
one day going to ſeek for ſomething wanted for the houſe, ſhe B
found both the drawing-room doors locked, and looking through
the key-hole, ſhe ſaw Miſs Woods and Miſs Pirie lying on the ſofa
in an improper manner.

One morning after this, the maid came to the ſchool-room door,
and told ſome of the girls that ſhe had juſt caught Miſs Woods C
and Miſs Pirie in the very act, having gone in upon them abrupt-
ly. She ſaid that Miſs Pirie leaped out of bed immediately, half
dreſſed, and that Miſs Woods hid herſelf under the bed-clothes.
When ſhe had told this, ſhe ſaid, 'When I come in with the kettle
'at breakfaſt, notice what like their faces are.' When ſhe did D
ſo, the young ladies obſerved that they avoided looking at her,
and that Miſs Pirie appeared much agitated.

The maid often ſaid they were brutes, and worſe than brutes,
naſty brutes; and, before the girls, ſhe put out her tongue at them.

The Saturday after Miſs M—— had firſt diſcloſed the matter E
to the nurſe, ſhe had another interview with her, when ſhe men-
tioned that Miſs Pirie had been again in the bed, and the ſcene
had been repeated which ſhe before witneſſed. The nurſe aſked
her if any other perſon had ſeen them behaving in the ſame man-
ner, and ſhe ſaid that Miſs Cumming and the maid had both ſeen F
it, and, in particular, that Miſs Cumming had been frequently di-
ſturbed, as above related. The nurſe adviſed Miſs M—— to let
it be known, that it might be put a ſtop to, and ſaid, 'Surely, Miſs
'Piric muſt be a man.'

Miſs Cumming and Miſs M—— are young ladies of the moſt G
unexceptionable character, enjoying the confidence and eſteem of
numerous reſpectable connections and friends. It will be proved,
if thought neceſſary, that the purſuers themſelves, before the de-
tection of their own unhappy miſconduct, uniformly ſpoke of both
in terms of the warmeſt approbation. H

(Signed) HENRY ERSKINE.
DAVID CATHCART.
GEO. CRANSTOUN.

Thereafter the Lord Ordinary pronounced the following inter- I
locutor: 'Having repeatedly heard counſel at great length, and Jan. 31. 1811.
'received a ſtatement in writing, of the facts alleged in the *vivâ*
voce

A ‘ *voce* argument, of which it was craved on the part of the de-
‘ fender to be allowed to give in a condeſcendence, in order to a
‘ proof, and having prepared notes of what may be proper for the
‘ Ordinary to ſtate to the Diviſion at reporting, makes aviſandum
‘ with the cauſe to the Lords of the Second Diviſion; and having
B ‘ tranſmitted, in a ſealed cover, the above ſtatement, and the notes
‘ of the Lord Ordinary's report, to the agent for the purſuers,
‘ with directions to tranſmit the ſame, without delay, to the agents
‘ for the defender, under the ſame precautions, and to be tranſ-
‘ mitted by them in like manner to the clerk of proceſs; appoints
C ‘ parties to be ready to debate at reporting; and allows the agents
‘ and counſel to take memorandums, but not copies, of ſaid ſtate-
‘ ment and notes; and ordains the clerk of proceſs, ſo ſoon as the
‘ papers are returned to him by the agents for the defender, to
‘ tranſmit the ſame, under a ſealed cover, to the Lord Juſtice-
D ‘ Clerk, together with the proceſs itſelf, which muſt not then be
‘ withheld by either of the parties.’

The Notes referred to in this interlocutor, are as follow:

Lord Ordinary's Notes, Jan. 30. 1811.

E The Lord Ordinary means to tranſmit the Statement for the defender under ſeal to his Brethren of the Second Diviſion; and as he cannot with propriety aſſiſt their deliberations by ordering memorials, he thinks it his duty to afford to them and the parties, in this form of a Note, the ſubſtance of the report which might
F have been expected from him *viva voce*, as preliminary to the further obſervations of counſel, and the deciſion of the cauſe.

The *ſtatement* was required merely as notes of the counſels' ſpeeches, in order to aſcertain more firmly the import of them, and is therefore not to be conſidered as matter of record, though
G the clerk, in framing the interlocutor, required it as *from the defender*. It has, however, been put in after two very long hearings with ſhut doors, at each of which the Ordinary expreſſed at conſiderable length the impreſſions which the arguments had made upon him.

Dec. 13. 1810.

H At the hearing on the 13th December, it was ſtated for the purſuers, and not denied for the defender, that the ſchool had been broken up in the ſpace of twenty-four hours, or ſome ſuch ſhort time, the other young ladies having thus rapidly followed the withdrawing of Miſs Cumming; and this they aſcribed to the
I meaſures adopted by the defender, or the mode choſen for carrying them into execution. A diligence was granted to the purſuers for recovering letters and other writings they might think material

terial in ſupport of their libel. In the mean time, the defender's counſel entered into details as to the nature of the imputations alleged generally in the defences, and craved leave to put in a condeſcendence of the facts, in order to a proof. The counſel for the purſuers ſaid, they were inſtructed by their clients not to oppoſe a proof: at the ſame time, they criticiſed freely the details of the defender, in order to ſhew the improbability and even incredibility of the whole ſtory; and they expreſſed, in the ſtrongeſt terms, their complaint of the defender's having made no communication to the purſuers, or any friend of the purſuers, of the grounds on which their ſchool and their reputation were in an inſtant overwhelmed in utter ruin.

The Ordinary on this occaſion avowed a ſtrong diſinclination to allow a proof. Such a meaſure could not, under any aſſignable precautions, be adopted without producing a general contamination of that purity and innocence of thought, and habits of intercourſe, which form a diſtinguiſhed feature in the manners of our country, and were the natural guardians of female virtue, and beſt attractions of female youth. And if the intereſt of thoſe were regarded for whoſe ſake the meaſures taken had been juſtified, a proof ſeemed of all things the moſt dreadful and deſtructive. It was certainly matter of much regret, that the defender, if acting on good evidence, as ſhe profeſſed to have done, did not adopt meaſures to reſcue the young perſons moſt immediately concerned, without rendering them victims of public fame. The obvious ſtep in ſuch circumſtances ſeems to be, to have gone, or ſent a perſon of reſpectability to the purſuers, to have laid before them the evidence of the imputation, and to have even aſſiſted them, if neceſſary, in order that they might break up the ſchool, and quit the country without exciting public attention. But if, beſides rouſing their attention, and rendering the affair an object of univerſal whiſpering and ſurmiſes, the unfortunate young perſons are to be adduced as witneſſes to ſuch details before a Supreme Court of Juſtice, it is difficult to figure what greater misfortune could be brought on them by their bittereſt enemy, than was thus inflicted by the perſon ſo zealous for their protection. He therefore earneſtly recommended it to the eminent counſel who were the defender's adviſers, to conſider well this matter before they urged on a proof, pregnant, however ſucceſsful, with ſuch fatal conſequences.

The Ordinary farther proceeded to ſtate the impreſſion the details had made upon him; and ſignified his ſuſpicion, that the belief had been adopted not more prudently than the meaſures followed

A lowed in purſuance of it. The ſtory, as it then ſtruck him, he thought *felo de se*, and probably originating from the malignity and arts of ſome corrupt domeſtic. And he gave his reaſons; moſt of which may be reſumed in obſervations on the ſtatement, and therefore need not here be mentioned. But as the defender's
B counſel ſeemed extremely decided, (at leaſt the junior and ſenior counſel) the Ordinary thought it becoming to allow them leiſure to conſider deliberately what they had heard, to inquire further if they thought fit, and to mature their views as to the conduct of a cauſe ſo new and ſo important. Accordingly, he ſignified,
C that after report of the diligence, he would be ready to hear another argument.

It ſhould not be omitted to note, that at this hearing a copy of a card was read by the purſuers' counſel, and produced in proceſs, dated 14th November, from the purſuers to the defender, in
D anſwer to one from her ladyſhip, and requeſting a communication of the grounds of her ladyſhip's diſſatisfaction; and alſo a letter or ſigned card, two days after, from the purſuer Miſs Pirie to the aunt of the Miſs Cumming mentioned in the ſtatement, entreating information in very affecting terms, as no anſwer had been made
E to the former card; and it was ſtated, that in like manner none was made to the laſt one. The counſel for the defender made no particular anſwer as to this matter; but reproached the purſuers as the true ſources of divulging the contaminating tale, by preſuming to raiſe the preſent proceſs.

F The purſuers recovered cards from the defender to Lady Cunynghame and Mrs General Anſtruther; and the term having been circumduced, counſel were again heard with ſhut doors on the
July 19. 1811. 19th January current, for nearly the ſpace of four hours.

On this occaſion, it did not appear that the miſchiefs attending
G obtaining a proof had met with any particular attention on the part of the defender. That meaſure was keenly contended for, and ſeemed to be contemplated as the unavoidable reſult of the purſuers' attempt to obtain redreſs for the ruin that had been brought upon them.

H It did not appear to the Ordinary, that the detail of facts was improved or rendered more credible, unleſs ſome more obſcurity appearing now to cover it, than he at firſt had inferred from the related circumſtances, is entitled to produce that effect. The Ordinary underſtood, from its being ſtated, that the young lady na-
I med in the ſpeech, witneſſed the purſuers' lift up each their ſhifts, when commencing the careſſes aſcribed to them; that ſhe had

ſeen

ſeen this happen, and of courſe had light to ſee it; but in this, it was diſtinctly ſtated, he was miſtaken; for that the whole ſcene ſhe witneſſed paſſed in darkneſs, ſo that her ſource of knowledge muſt have been derived from the ſenſes of touch and hearing only. A

The Ordinary had remarked it as a circumſtance of very ſtrong improbability, that, ſuppoſing the purſuers had conceived an unnatural paſſion for each other, perſons of their allowed ſenſe and accompliſhments ſhould have arranged their family ſo, as that each ſlept with a young lady; and that in order to indulge their paſſion, they ſhould viſit each other in bed, when they ſuppoſed the young ladies were aſleep; and that on occaſion of ſuch viſits, the viſitor ſhould require ſolicitations and entreaties to ſlip into bed to the perſon viſited; and that too, when, according to the ſtory, ſo far from there being any plan of ſeducing or debauching the young ladies, it was ſtated that any appearance of their being awake induced the purſuers to deſiſt immediately from their indulgences. With a view to this obſervation, it was now conjectured, that it might be in contemplation to produce a graduai contamination of the young ladies in queſtion, by rendering them hidden, or as they themſelves might ſuppoſe, concealed witneſſes of ſuch amours. But the Ordinary thought this conjecture very unſatisfactory, and nowiſe correſponding to the ſtory in its various circumſtances, and to the fondneſs for each other's perſons aſcribed to the purſuers. B C D E

The principal object of the defender's counſel on this occaſion appeared to be, to convince the Lord Ordinary that the crime alleged was a real, and not an imaginary crime; and a great deal of learning and reſearch was diſplayed in furniſhing authorities for proving the exiſtence and puniſhment of this ſpecies of the *venus nefanda*. F G

And it is material to add, that, as at the former hearing it was ſtated, that the ſervant-woman mentioned in the details, had not been ſpoken with by the defender or her doers at all; ſo it was now pointedly admitted, on being queſtioned on the part of the purſuers, that the meaſures taken by the defender, by which the ſchool was broken up on the 14th and 15th of November, were founded ſolely on the information of Miſs Cumming, the defender's grandaughter; and that at this time no communication whatever had taken place with Miſs M—— the other young lady quoted as a witneſs. And here, though ſomewhat ſtrangely as it appeared to the Ordinary, it was pleaded, that it was abſolutely neceſſary to H I

inſiſt

A inſiſt for a proof for the exculpation of theſe young ladies, Miſs Cumming and Miſs M——, who, it was ſaid, had been treated with great obloquy by the purſuers and their friends, as the inventors of the ſcandalous imputations in queſtion.

On the other hand, the purſuers' counſel, though they ſtill aver-
B red their inſtruction not to oppoſe a proof, pointed out powerfully the enormous miſchiefs with which ſuch a proof, if allowed, muſt be attended; and threw out doubts as to the competency of admitting to proof, as a defence of *veritas convicii*, the allegations of a crime proved with ſo much learning to be one of the firſt magni-
C tude, eſpecially, where previous to the imputation, it was not alleged that any information had been lodged with the public proſecutor. Some other objections in legal bar to a proof were taken notice of, which it does not appear neceſſary for the Ordinary to reſume to the Court.

D The defender's counſel anſwered, that if the proof was oppoſed on the ground juſt ſtated, only nominal damages could be given.

The Lord Ordinary expreſſed his regret, that ſo little attention ſeemed to have been paid to what he had ſtated at the former hear-
E ing; that not even an attempt had been made to ſoften to his mind the horror of allowing a proof in ſuch a caſe, or to point out any reaſonable probability of ſucceſs, where all ſeemed to depend on the teſtimony of a ſingle young lady of what paſſed in the dark, and was meant to be concealed from her; and on that of a ſervant girl, whoſe expected teſtimony was detailed from her reported con-
F verſations with the young ladies of a boarding-ſchool; the informer, the grandchild of the defender, being apparently an inadmiſſible witneſs, and therefore out of queſtion. That the difficulties of the former ſtatement did not appear to him at all removed, by what had now been pleaded; and that the darkneſs itſelf,
G though it excluded from the witneſs the view of the naked figures of the purſuers in their congreſs, on which he had formerly made ſome remarks, left great room for the imagination of the witneſſes, which might eaſily be very much miſled, if previouſly under the contamination of a corrupt domeſtic, pretending to relate what
H ſhe had ſeen of the gratifications of wantonneſs and luſt. And no account had been given to him of the name, hiſtory, or character of the domeſtic, ſo important a perſonage in the ſcenes deſcribed. But he chiefly repented his not having carried the cauſe and the counſel at once to the Diviſion, where the Judges would have had
I an opportunity of hearing all the Ordinary had heard, and forming their own opinions as the caſe proceeded. All, however, he could

could now do, was to require a ſort of ſtatement that might afford ſome fixture to the *vivâ voce* details, ſo as to render them a diſtinct ſubject of argumentative diſcuſſion, before the Court decided whether to admit them on record or not. He therefore would appoint the defender's counſel to communicate to him, under ſeal, notes of their ſpeeches, ſo far as reſpected details of fact, or the memorials containing thoſe details from which they ſpoke.

The Court roſe; and the interlocutor pronounced was afterwards handed to the Ordinary among others, and ſigned without being peruſed; ſo that it is not ſo clearly expreſſed in it as he ſhould have wiſhed, that the ſtatement to be received was not, at leaſt immediately, to form part of the record. But it is preſumed, both parties will agree as to the object of the order, and that it will reſt with the Court to determine, whether the ſtatement that has been given in ſhall form part of the record or not, and how the cauſe ſhall henceforth be conducted. In the mean time, the Lord Ordinary has taken the cauſe to report, and appointed them to be ready to debate thereon, after having the advantage of conſidering the ſtatement, together with the ſubſtance of the report which the Ordinary has in contemplation to make to the Court at adviſing the cauſe.

The ſtatement will of courſe be very carefully conſidered by your Lordſhips, and in reporting the cauſe, the Ordinary does not think it his duty to do more than acquaint your Lordſhips with the more material remarks which he made at the hearing of the details *vivâ voce*, before appearing in this form, and with pointing out what appears to him new in this paper.

After acknowledging the natural tendency of his mind to doubt of what was extraordinarily wicked and unnatural, and that his experience, and the philoſophy he eſteemed, led to ſtrengthen this tendency, the Lord Ordinary ſaid, that he was diſpoſed to believe that the crime in queſtion, when imputed to women of the ordinary conformation of this country, for the purpoſe of the habitual gratification of the venereal appetite, by means of copulating with each other, was equally imaginary with witchcraft, ſorcery, or carnal copulation with the devil. Their private parts were not ſo formed as to penetrate each other, and without penetration, the venereal orgaſm could not poſſibly follow from the mere ſurface action of the parts moving in imitation of a man and woman in copulation. The Ordinary was referred by the defender's counſel to the Latin and the Greek, as poſſeſſing *voces ſignatæ*, technical terms denoting the crime. But the terms in queſtion powerfully con-

 firmed

A firmed his opinion. They import the crime of one woman giving another the criſta or clitoris, which in this country is not more conſiderable than the nipple of the breaſt, and that, too, immerſed between the labia of the pudenda. It is therefore taking
B the crime, as expreſſed in the language of the Greeks and Romans, —a crime, which, in the general caſe, it is impoſſible in this country to commit.

As to the opinion of lawyers and divines, he had heard none that went to ſhake what he conceived was founded in common ſenſe and
C reaſon. In fact, it did not appear to him that any of them ſtruck at it, except perhaps ſome looſe words of Avicenna, too abſurd and extravagant to merit any regard. He profeſſes to teach huſbands their duty, in order to prevent wives, when left with an imperfect gratification, to ſeek the completion of it from the
D firſt man or woman they met with; and hence it is argued, that therefore the authority of Avicenna proves, that any woman can ſatisfy the venereal appetite of another!

The Ordinary referred the parties to a dialogue of Lucian in his Meret., the expreſs purpoſe of which was an inquiry at a girl,
E who admitted ſhe had been a pathic, how the crime in queſtion could be committed; and there Lucian betrays his utter ignorance of the poſſibility of it, being reduced at laſt to make the girl refuſe to diſcloſe *the secret*.

But if the Ordinary's opinion is well founded, then, according
F to the ſtatement, the purſuers muſt both be endowed with an extraordinary conformation; for they are repreſented as alternately in their viſits, performing the function of the *male*. Accordingly, Miſs M's nurſe conjectures that Miſs Pirie muſt be a man, and Miſs Cumming's confidant on the very ſame grounds, muſt have
G conjectured that Miſs Woods was the man. It is obvious, however, that ſo extraordinary a circumſtance is utterly incredible, or at leaſt ſo incredible, that no court of juſtice could be called on to admit a proof of it. One woman of extraordinary formation does not exiſt among millions; and that two women of ſuch
H a ſtructure ſhould get together, after maintaining reſpectable female characters in genteel ſociety, and then join in an undertaking where much propriety and circumſpection is required, in order to practiſe reciprocally unnatural enormities, ſavours too much of the miracle to be liſtened to, except as evidence of falſe-
I hood and deception.

But perhaps it might be ſaid, that the purſuers may have had recourſe to tools reſembling the male inſtrument of generation,

or

or to the uſe of their fingers. According to the Ordinary's un- A
derſtanding of the details at the firſt hearing, he conceived that
the ſight of the purſuers in a ſtate of nakedneſs, when about to
commence their embraces, was fatal to any hypotheſis as to the
uſe of tools, while the motions and ſhakings of the beds, of which
ſo much is ſaid, excluded all poſſibility of the employment of B
fingers. And though the *ſtatement*, by generally excluding light
from the witneſſes, while it renders their knowledge of the mutual
lifting of the ſhifts the more extraordinary, does leave the appear-
ances of the naked figures to imagination, and of courſe admits the
poſſibility of the carrying tools; ſtill it will ſtrike any perſon, C
that the wet noiſe mentioned in the ſtatement, aſſorts ill with the
action of an ὀλισθος; or *penis coriaceus*, as much as the ſhakings of
the bed and deſcribed motions continue repugnant to the other
hypotheſis of the uſe of fingers. There is, however, an anecdote
mentioned in the ſtatement, and to be afterwards mentioned, D
which ſeems nearly deciſive.

It muſt be admitted, however, that there is ſtill another uſe that
women of the ordinary conformation have made of one another
for a venereal purpoſe, viz. for excitements, though not for gratifi-
cation. Theſe ſcandalous functions, and the terms derived from E
τριβω, denoting them, are often mentioned among the ancients.
But it will be remarked, that theſe are always deſcribed as merely
calculated to excite the venereal appetite, and prepare for the ad-
miſſion of the male ſex. See Juvenal's account of the myſteries of
the Bona Dea, as practiſed in his time, and the Notes of his Com-
mentators. But it is not ſo much as alleged, that the ſcenes de- F
ſcribed in this cauſe, had the ſmalleſt tendency to any communi-
cation with the male ſex. On the contrary, there is an inquiry
aſcribed to Miſs Woods, whether ſhe had now fitted Miſs Pirie to
get a ſound ſleep, which implies that a full gratification of the ve-
nereal appetite was the underſtood object. G

But, beſides the phyſical difficulties involved in the details, there
appeared to the Ordinary very groſs moral improbabilities, which
ſeem to be rather augmented than otherwiſe by the ſtatement. It
was certainly ſtrange enough, that intelligent women, wiſhing to
keep a diſgraceful vice ſecret, ſhould manage their intercourſe by H
each chooſing a different bedfellow, and then viſiting each other's
bed, when the bedfellow was ſuppoſed to be aſleep, and there en-
gaging in the performance of acts of copulation, attended with
much noiſe and agitation, and carrying on audible converſations
concerning what they were about; but it is now further told, that I
moſt of the boarders ſlept in the two apartments where Miſs
Woods

A Woods and Miſs Pirie ſlept, ſo that the purſuers expoſed themſelves not only to the hazard of waking a bedfellow during their violent indulgences, but to the ſtill more imminent hazard of ſome one out of three, four or five girls, waking and witneſſing what they were about, and all this, too, when, without ſuſpicion
B of the ſmalleſt impropriety, they might have ſlept together every night, completely ſheltered from all hazard of imputation, by the eſtabliſhed habits and known innocence of female intercourſe.

There is, however, a piece of ſtill more material new information contained in the ſtatement, which, though meeting one of the
C remarks which the Ordinary made at the firſt hearing, ſuggeſts many new reflections on the hiſtory given of thoſe extraordinary tranſactions.

It is now ſaid that Miſs Woods and Miſs Pirie ſlept together in the ſame bed during the ſummer holidays, and Miſs Cumming
D ſlept in a bed at the foot of their bed, where ſhe was ſtill diſturbed by their noiſe and ſhakings; and previous to this, Miſs Cumming is ſtated as having overheard Miſs Woods requeſt Miſs Pirie, at a nocturnal congreſs, to *promiſe* not to come again to her bed till the holidays, which Miſs Pirie refuſed, becauſe '*ſhe would not be*
E '*able to keep it.*'

This, it will be obſerved in paſſing, plainly implies that Miſs Pirie had pleaſure in the congreſs, where ſhe acted the male part, which ſhe is ſtated to have done when viſitor, and this excludes the hypotheſis of the uſe of tools.

Statement, p. 5. F But it is now further detailed, that Miſs Cumming's obſervations commenced *after* the defender's quitting Edinburgh on the 1ſt of May, and that the next morning after her firſt obſervation, Miſs Cumming told Miſs M. what had happened, and Miſs M. in return mentioned, that *a few nights before* Miſs Pirie had been in Miſs
G Woods' bed, and ſhe had obſerved the ſame motions, and the ſame ſhaking of the bed.

Both young ladies were therefore on their guard, and alert obſervers thus early. Miſs Cumming, too, even on the very firſt occaſion, is repreſented as diſguſted ſo as intentionally to interrupt
H the purſuers. But it appears, that at this early period, their knowledge of what was going on had received the ableſt aſſiſtance: For

Statement, p. 6. it is ſtated, that 'the morning after Miſs M. was firſt diſturbed,' ſhe roſe earlier than uſual; was firſt in the ſchool-room; complained to the woman-ſervant of having had a dreadful night, who is
I ſaid to have immediately underſtood her, &c. That two or three of the eldeſt girls came down ſoon after, and all joined in ſpeaking of what had happened; and the maid communicated her obſervations through the key-hole, &c.

According

According to the ſtatement, therefore, this diſcuſſion of the buſineſs preceded Miſs Cumming's firſt obſervation, for Miſs M's had preceded her's '*a few nights.*' A

The congreſſes, however, appear to continue frequently; the maid from time to time communicates her obſervations; the purſuers are detected in the fact by the maid, and betray agitation and ſhame in her preſence, who exerciſes her dominion by affrontive geſtures, which they ſubmit to. The purſuers, too, muſt, according to the ſtatement, have apprehended, that they had been detected both by Miſs Cumming and Miſs M. Nevertheleſs, in theſe circumſtances, they go to ſleep together for criminal gratification in a ſort of public room, where Miſs Cumming continues to be placed in a ſituation competent to obſerve them, as well as the other boarders ſleeping there, of whom thoſe that were elder had all been appriſed of their enormities by the maid, and thus rendered ſpies on their conduct. Of this ſingular tale, your Lordſhips are now to judge; and it is not the leſs extraordinary in all its circumſtances, that Miſs M's perſevering ignorance, even ſubſequent to the holidays, as it ſhould ſeem, is ſtill recorded, and the aid afforded by the inſtructions of her good nurſe, while no mention is made when the defender returned to Edinburgh, and received her firſt intelligence, nor how it happened that none of the ladies wrote to be relieved from ſuch a horrid ſituation, or if they did write, that no attention was paid to their letters. B C D P. 7. bottom. E

It only occurs to add, that the conduct and diſpoſal of this ſtrange, and not more ſtrange than melancholy caſe, appears to the Ordinary to call for the utmoſt exertions of your Lordſhips' wiſdom and prudence; and that whatever you do, he hopes you will now take it into your own hands, being ſo extremely ill ſuited, in every view, to proceeding before a Lord Ordinary. F G

Againſt the foregoing interlocutor, taking the cauſe to report, the defender gave in a repreſentation, in which it was ſubmitted, that the uſual form of allowing memorials to be given in ought to be adhered to; and this the more eſpecially, that his Lordſhip's report was ordered, (out of the uſual courſe,) to be tranſmitted in writing to the Court, before the cauſe was put to the roll to be adviſed; and that if there was any impropriety, or inexpediency in theſe papers making part of the record, it was ſubmitted that they might be ſent under cover to the Lord Juſtice-Clerk, along with his Lordſhip's Notes. The repreſentation then prays his Lordſhip to alter his interlocutor, and to allow the repreſenter to give in a memorial or information Repreſentation for the Defender. H I

in the cauſe, in order to be laid before the Court in the manner his Lordſhip ſhould be pleaſed to direct.

Upon adviſing this repreſentation, the Lord Ordinary pronounced the following interlocutor: 'Having conſidered the repreſentation for the defender, which the Ordinary obſerves, does not pray to recall the aviſandum to the Diviſion, but only craves leave to allow the repreſenter to put in a memorial to the Court: Makes aviſandum alſo with the ſaid repreſentation to the Second Diviſion, and of new appoints both parties to be ready to debate, in caſe the Diviſion prefer hearing counſel at the reporting to ordering memorials.'

Feb. 9. 1811.

Thereafter the ſaid action was enrolled in the Inner-Houſe roll of cauſes for the Second Diviſion of the Court, by courſe whereof the ſame came in, and was called in preſence of their Lordſhips; and, of this date, the following interlocutor was pronounced: 'Upon report of Lord Meadowbank, and having, with ſhut doors, heard the counſel for the parties in their own preſence, and adviſed the cauſe; the Lords, before anſwer, appoint the defender, between and this day ſe'ennight, to lodge with the clerk to this proceſs, a preciſe, articulate and ſpecial condeſcendence, in terms of the act of ſederunt, of the facts ſhe avers and offers to prove; and the Court directs the clerk to tranſmit the ſaid condeſcendence, when lodged, to the Lord Juſtice-Clerk, under a ſealed cover, in order to be by his Lordſhip communicated to the Judges in ſucceſſion; and further directs the clerk to keep the proceſs under a ſealed cover, and not to exhibit the ſame to any perſon, except when it may be neceſſary that the procedure ſhould be borrowed for the uſe of counſel, and in ſuch caſe, that it ſhall be lent only to the agents in perſon, and not to their clerks, and ſhall be put again under a ſealed cover when returned.'

Feb. 16. 1811, ſigned 19th.

Condeſcendence for Defender.

Accordingly, the following CONDESCENDENCE for the defender was lodged, in terms of the inſtructions contained in the above interlocutor.

CONDESCENDENCE for Lady CUMMING GORDON, Defender, againſt Miſs MARIANNE WOODS and Miſs JANE PIRIE, Purſuers.

The defender avers and offers to prove,

1ſt, That her grandaughter, Miſs Jane Cumming, was boarded with the purſuers during the ſummer and autumn of 1810.

2d, That when the ſchool aſſembled after the ſummer holidays, the boarders ſlept chiefly in two apartments, in one of which Miſs Piric

Pirie ſlept, and in the other Miſs Woods. That Miſs Cumming A
was Miſs Pirie's bedfellow, and from the day of September,
Miſs Munro was Miſs Woods' bedfellow.

3*d*, That between the time when the ſchool aſſembled (which was towards the end of July) and the beginning of November, Miſs Woods on various nights went into the room in which Miſs Pirie B
and Miſs Cumming ſlept, and lay down in bed with them. During the ſame period, Miſs Pirie occaſionally went into Miſs Woods' room, and lay down in bed with her and Miſs Munro.

The purſuers are required to confeſs or deny this article explicitly.

4*th*, One night during the ſaid period, Miſs Cumming was C
awaked by Miſs Pirie ſpeaking to Miſs Woods. Miſs Pirie was then in bed, and Miſs Woods ſtanding by it, and they were kiſſing each other. Miſs Pirie ſaid, 'Oh, do it darling!' Miſs Woods anſwered, 'Not to night, it would awake Miſs Cumming;' or they reſpectively uſed words to that effect. In a little Miſs Woods D
came into bed; upon which Miſs Pirie put down her hand and lifted up her ſhift. Miſs Woods then lay above Miſs Pirie, and when in that ſituation, ſaid, 'I would like to have ſome one above 'me,' or words to that effect. Miſs Woods then put down her hand, and they made a noiſe deſcribed to the defender as a wet E
kind of noiſe, attended with motions of the body, quick and high breathing, and a ſhaking of the bed.

Miſs Cumming being diſguſted, ſaid twice, 'Oh, Miſs Pirie,' before the latter anſwered. At laſt, Miſs Pirie ſaid, 'What?' Miſs Cumming ſaid, 'What ſhakes the bed?' Miſs Pirie replied. 'No- F
'thing,' or words to that purpoſe paſſed; after which Miſs Pirie covered herſelf with the bed-clothes. Miſs Cumming lay awake for a long time, complaining ſhe could not ſleep. Miſs Pirie deſired her, two or three times, to turn her face to the wall and try to ſleep; and Miſs Pirie having at laſt turned herſelf, ſaid, 'Now, G
you muſt turn, as I have turned,' or words to that purpoſe; and ſhe covered Miſs Cumming with the clothes. Then Miſs Woods went out of bed; and when ſhe had reached her own door, Miſs Pirie coughed, in order that the opening of the door might not be heard by Miſs Cumming. In a little Miſs Woods was heard to cough, when Miſs Pirie ſaid, 'Oh, this is Miſs Woods coughing, H
'I muſt go to ſee her, poor ſoul!' or words to that effect; and ſhe went accordingly.

5*th*, The morning after this happened, Miſs Cumming mentioned it to Miſs Munro, who ſlept with Miſs Woods; and Miſs Munro informed Miſs Cumming, that a few nights before Miſs Pirie had been

A been in Miſs Woods' bed, and ſhe obſerved motions, and a ſhaking of the bed, ſimilar to what Miſs Cumming deſcribed.

6th, On a ſubſequent night during the foreſaid period, Miſs Cumming was awaked by a noiſe, motions, and breathing ſimilar to thoſe deſcribed in the fourth article. At that time Miſs Woods
B was lying above Miſs Pirie; and Miſs Pirie ſaid to her, 'Oh, you 'are hurting me!' or words to that effect.

7th, Another night during the foreſaid period, Miſs Woods being in Miſs Pirie's bed, and lying above Miſs Pirie, they took up their ſhifts; and Miſs Pirie ſaid, 'Oh, you are in the wrong place!'
C Miſs Woods ſaid, 'I know.' Miſs Pirie ſaid, 'Why do you do it 'then?' Miſs Woods ſaid, 'For fun;' or they uſed words to that effect.'

8th, Another night during the foreſaid period, Miſs Woods ſaid to Miſs Pirie, when in the ſame ſituation as is deſcribed in the im-
D mediately preceding article, 'Am I hurting you?' Miſs Pirie ſaid, 'No.' Upon which Miſs Woods continued the motions; and when about to go away, ſaid, 'Good night, darling; good 'night. I think I have put you in a fair way to ſleep.' To this Miſs Pirie replied, 'No;' and Miſs Woods again continu-
E ed; or they reſpectively uſed words to the above effect, while acting in the manner now condeſcended on.

9th, On other occaſions during the foreſaid period, Miſs Woods, during the night, was in Miſs Pirie's bed, and they lay the one above the other, and kiſſed and embraced. One night in particular
F when this happened, Miſs Woods ſaid to Miſs Pirie, 'Now, dar-'ling, will you promiſe me one thing?' Miſs Pirie anſwered, 'I 'do not know: What is it?' Miſs Woods ſaid, 'Now, darling, will 'you promiſe me, that you will not take me in your arms, nor 'come again into my bed till the holidays?' To this Miſs Pirie
G replied, 'I know I will not be able to keep it;' and ſhe did not promiſe; but Miſs Woods ſaid, 'I will not take you in my arms, 'or come to your bed, but you may kiſs me, and I will kiſs you;' or converſation to this effect paſſed between them, while Miſs Woods was in Miſs Pirie's bed.

H *10th*, During the ſummer holidays, immediately preceding the period above mentioned, that is to ſay, the holidays in June and July 1810, Miſs Pirie and Miſs Woods ſlept together, and Miſs Cumming ſlept in a bed at the foot of their bed. During that period, Miſs Cumming was frequently diſturbed in the night by
I the ſhaking of their bed and the noiſe they made, which was ſimilar to what ſhe afterwards obſerved when they were in bed beſide her, as above mentioned.

11th, While

11*th*, While Miſs Woods ſlept with Miſs Munro, in the month of September or October 1810, Miſs Pirie came one night into their bed, and lay a long time above Miſs Woods, and they made the bed ſhake. A

12*th*, On a ſubſequent night, within the ſame period, Miſs Pirie came again into the bed where Miſs Woods and Miſs Munro ſlept, and on this occaſion, alſo lay above Miſs Woods, and they made the bed ſhake. Miſs Munro coughed, to ſhew ſhe was awake; upon which Miſs Woods alſo began to cough, and deſired Miſs Munro to to fetch her ſome water from the dreſſing-room, which Miſs Munro did; and as ſhe was returning, ſhe ſaw Miſs Pirie go out of the room. On the occaſions mentioned in this and the preceding article, the purſuers whiſpered together, but Miſs Munro did not hear what they ſaid, as ſhe is a little deaf. B C

13*th*, In the month of October laſt, after Miſs Munro's family came to town, and ſome weeks before Miſs Cumming left the ſchool, Miſs Munro informed a ſervant or nurſe in her father's houſe, of what ſhe had perceived improper in the conduct of the purſuers, of the nature above related, and the ſaid ſervant or nurſe expreſſed her horror thereat. D

14*th*, In the courſe of the year 1810, the purſuers repeatedly lay together in indecent attitudes, and were guilty of lewd and indecent behaviour towards each other. They were alſo in the practice of kiſſing and careſſing each other before the young ladies in a wanton manner. E

15*th*, The morning after the ſecond time that Miſs Munro was diſturbed in the manner related in the 12th article ſhe roſe earlier than uſual, and was firſt in the ſchool-room. A ſervant maid was doing up the room at the time; and Miſs Munro having ſaid that ſhe ſlept ill, and had had a dreadful night, or ſomething to that effect, the maid underſtood how ſhe had been diſturbed, and ſaid, laughing, 'It is a pity they cannot get a man, but that they will 'never get,' or words of the like import. Some of the elder girls coming into the room, joined in the converſation; and the maid-ſervant related ſome of the improprieties ſhe had ſeen. In reſpect whereof, &c. F G H

(Signed) GEO. CRANSTOUN.

Thereafter the following interlocutor was pronounced: 'The 'Lords appoint the purſuers to give in anſwers to the condeſcendence for the defender, and appoint the ſame to be lodged 'and tranſmitted to the Court under ſeal, in the ſame manner as 'the condeſcendence and that *quamprimum*.' Accordingly, the following ANSWERS were lodged in proceſs, viz. Mar. 2. 1811. I

ANSWERS for Miſs MARIANNE WOODS, and Miſs JANE PIRIE, to the Condeſcendence for Lady CUMMING GORDON.

Anſwers for Purſuers to Defender's Condeſcendence.

History of Purſuers.

A That the purſuer Miſs Marianne Woods is the daughter of a reſpectable merchant-tailor in London, and niece of the late comedian Mr Woods, who by his deportment in private life, is well known to have obtained the reſpect of the inhabitants of this city, during his long reſidence among them. She was put under her uncle's
B care early in life, and received a moſt liberal education, both in accompliſhments, and in more ſolid mental acquirements. Previous to the death of Mr Woods, the purſuer employed herſelf in giving aſſiſtance to him in teaching reading and elocution to private pupils; and after his death, ſhe for ſome time continued to
C ſupport herſelf by proſecuting the ſame employment or profeſſion. She gave up this about a year before the commencement of the partnerſhip with the other purſuer, and in the interval directed her ſtudies more particularly to the branches of education, and the modes of inſtruction which were likely to be required in the pro-
D poſed eſtabliſhment. Miſs Woods is at preſent of the age of *twenty-eight*.

The other purſuer, Miſs Pirie, is the daughter of Mr Pirie, writer in Edinburgh. She alſo received, as your Lordſhips may ſuppoſe, a very liberal education; and being deſirous of uſing the
E talents of which ſhe was poſſeſſed, to enable her to live in independence, ſhe very early determined to go into the profeſſion of a governeſs. The particular attention of your Lordſhips is requeſted to the families in which ſhe has lived in that capacity, to every one of whom ſhe gave moſt perfect ſatisfaction. She firſt went
F into the family of *General Dirom*, where ſhe reſided a very conſiderable time. From General Dirom's ſhe went to the family of *Captain Loxes*, in George Square. She next went to the *Earl of Lucan's*, and was there under the direction of *Mrs Hamilton*, the well-known authoreſs. After this ſhe went to the family of *Mr Macdowall Grant* of Arndilly. And, laſt of all, ſhe went to Mrs Campbell of Kailzie, and was reſiding with the daughters of her brother-in-law, at the houſe of Mrs General Campbell of Strachur Park, when ſhe entered into the ſpeculation with Miſs Woods. And that your Lordſhips may judge of her character maintained in all
H theſe different ſituations, both for principle and morals, and for unwearied attention to her pupils, there are herewith produced moſt ample certificates from Mrs Dirom, Mrs Loxes, Mrs Hamilton, and Mrs Macdowall Grant. Theſe certificates were not got for the purpoſe of this cauſe, but are certificates given at the time

when

when ſhe left the ſeveral families. No certificate was obtained A
from Mrs General Campbell at the time when the purſuer left her
family, becauſe, as ſhe was not going into another family, there
was no occaſion for it. But a certificate in the ſtrongeſt terms
from her alſo is produced; and as a farther proof how ſhe was re-
garded by that family, a young lady nearly connected with it was B
intended to have been put under Miſs Pirie's charge at the board-
ing-ſchool in *this very winter*, of which the purſuer has evidence
in a letter written to her in very *confidential* terms. Miſs Pirie is
now of the age of *twenty-ſeven.*

The two purſuers firſt became acquainted about nine years C
ago. They met at Mr Dallaway's drawing-ſchool, and ſoon form-
ed a cloſe intimacy. Afterwards, Miſs Pirie, for her own im-
provement in reading, attended one of Miſs Woods claſſes for
ſome time, and at a later period ſhe took private leſſons from her.
After this, they together attended a private claſs for learning D
Latin, and their intimacy increaſed into a ſettled friendſhip.

They were of courſe a good deal ſeparated by the different ſi-
tuations in which Miſs Pirie was placed. But their friendſhip
continued unabated, and they gradually formed the mutual reſo-
lution of ſetting up in buſineſs together. E.

Your Lordſhips will readily ſuppoſe, that Miſs Pirie had made
many valuable friends during her reſidence in the different fa-
milies above mentioned; and by care and economy, ſhe had alſo
realiſed, what to her was a conſiderable ſum of money. And it
is impoſſible to paſs this without remarking, that all this anxiouſly D
gained fruit of her ſtudies and labour, has been at once diſſipated
by the ruinous calumny with which the defender has overwhelm-
ed her.

Miſs Woods alſo was well known, and generally reſpected as a
teacher, and her funds, though leſs than thoſe of Miſs Pirie, were G
in like manner ſunk in the proſpects of ſucceſs with which they
reaſonably flattered themſelves in their new eſtabliſhment.

Eſtabliſh-
ment of the
School.

It is neceſſary to explain, that previous to the commencement
of the boarding-ſchool, Miſs Woods had reſided with her aunt
Mrs Woods, and Miſs Pirie was under engagements with Mrs H
Campbell for ſix months later than the term of Whitſunday 1809,
at which term they had taken the houſe which they had in view,
and propoſed to begin their eſtabliſhment.

The money of the purſuers, chiefly that of Miſs Pirie, was laid
out in purchaſing furniture, books, and the various other articles I
neceſſary for ſuch a ſchool. And every thing being ready, Miſs
Woods entered upon the buſineſs at Whitſunday 1809. Very un-

fortunately

A fortunately for both parties, Miſs Pirie not being then able to join, Miſs Woods thought it proper to take along with her, her aunt Mrs Woods,—a circumſtance which was afterwards productive of jealouſies between them, of which it will be neceſſary preſently to give your Lordſhips ſome notice.

Progreſs of B During the firſt half-year, there were only two ladies attending the ſchool, Miſs Hay and Miſs Sandford, beſides a Miſs Clendinning, aged twenty, who had reſided for ſeveral years with Mrs Woods.

In November, Miſs Pirie joined Miſs Woods. In the month C of December, Miſs Cumming, then of the age of fifteen, was ſent to the ſchool. Soon after, the two Miſs Dunbars, of the ages of fifteen and ſixteen, then Miſs Dewar, of the age of nine, then Miſs Jane Anſtruther, of the age of ten, and ſucceſſively Miſs Jane Hunter, aged eight, two Miſs Edgars, aged eleven and fourteen, D Miſs Cunynghame, daughter of Sir William Cunynghame, fourteen, Miſs Stirling of Kippenroſs, ſixteen, Miſs Munro, ſeventeen, and, laſt of all, about the end of October 1810, two Miſs Fraſers, aged eleven and thirteen.

Your Lordſhips will keep it in view, that Miſs Cumming entered E to the ſchool in December 1809, and ſhe from that time downwards ſlept in the ſame bed with Miſs Pirie. And the two Miſs Dunbars, alſo, though only day-ſcholars, had alſo entered in the beginning of the year 1810.

The ſchool being thus in a proſperous ſituation, it may be pro- F per to give your Lordſhips ſome idea of the economy of it, and of the manner in which the purſuers endeavoured to diſcharge their duties to the young ladies, and for this purpoſe, the beſt way is to ſtate the general rules, and the order obſerved throughout the day.

G The plan of the purſuers was to take twelve night-boarders, and a few day-boarders. During the firſt part of the year, they had a conſiderable proportion of this number, and before the ſchool broke up they had ten night-boarders, and were already engaged to take two more at Martinmas.

H The night-boarders were diſpoſed in two rooms, in one of which Miſs Pirie ſlept, and in the other Miſs Woods. It will preſently be neceſſary to *entreat the moſt minute attention* of your Lordſhips to the ſituation and topography of theſe rooms, and the beds placed in them, as well as to other parts of the houſe. But at preſent, it is ſufficient to mention that the young ladies were I divided in this manner; that the two rooms enter *through one another*,

other, and that at the end of the *one* was a *general* dreſſing-room for the whole houſe, and at the end of the *other* a ſmall room in which Mrs Woods ſlept. A

Theſe things being obſerved, the arrangement of the ſchool was as follows: In the morning, an alarm-bell was rung by the ſervant, in ſummer, at a quarter before ſeven, and in winter at a quarter after ſeven. Immediately after ringing the bell, the maid came into the rooms, the young ladies got out of bed, and the maid laced their ſtays. And your Lordſhips will obſerve, that it was an invariable rule that no *young lady was allowed to riſe before the maid came into the room*, without particular permiſſion. They then went into the dreſſing-room, and were ſucceſſively dreſſed; the *rule* being, that each had the aſſiſtance of the maid *firſt*, by *turns* on each ſucceſſive morning. They then went down ſtairs, the rooms being already in order, and employed themſelves in preparing their leſſons for the day. Economy of the School. B C D

As ſoon as the whole ſchool and the purſuers were aſſembled in the ſchool-room, prayers were read, at which the maid alſo attended, and afterwards one of the young ladies read a portion of ſacred hiſtory.

Whilſt breakfaſt was preparing, the purſuers heard the young ladies ſay part of their leſſons. After breakfaſt, the writing-maſter came at nine o'clock; and from the time of his departure at *ten*, throughout the whole day, the purſuers were conſtantly employed, till between *eight* and *nine* o'clock at night, in ſeverally teaching the different branches of education to the young ladies, either in claſſes, or ſingly, with the exception of an hour allowed for walking, and the time allowed for dinner and tea. The purſuers made it a rule, never to allow the young ladies to be with a maſter, without one or other of themſelves being preſent. They alſo, by alternate weeks, walked out along with the young ladies; and the one whoſe turn it was not to walk out, remained at home, and was underſtood to receive company; that is, the friends and relations of the young ladies who choſe to inquire about them. E F G

After the buſineſs was over for the day, a ſhort time was allowed for playing with dumb-bells, and ſimilar uſeful relaxations; and then the day was concluded by prayers, and reading another portion of ſacred hiſtory. H

When this was ended, Miſs Woods retired with thoſe of the young ladies who ſlept in her room, and Miſs Pirie with thoſe who ſlept in her room. After being partly undreſſed, and having put on wrappers, they all went into the general dreſſing-room, I

A where they bruſhed their hair, teeth, &c. They then went into their ſeparate rooms, where the younger ladies ſaid prayers and hymns aloud, and the elder ſaid prayers by themſelves. When they were all in bed, each of the purſuers wiſhed thoſe in her own room good night, and then paſſed through the other
B room, and bid the other ladies good night in like manner.

Till the end of Auguſt, the purſuers generally ſupped in the room of Mrs Woods. After that time, Miſs Woods ſupped with her aunt; but Miſs Pirie came down ſtairs and ſupped in the ſchool-room or drawing-room, and was frequently in the habit of
C ſitting up very late, employed in reading, writing, or practiſing her muſic, &c.

Mrs Woods took no charge of the education of the ladies, but attended to the other arrangements of the family.

From the ſtatement which has now been given, your Lordſhips
D will eaſily ſee, that the purſuers were conſtantly occupied with the duties of their ſituation from morning till night, and had no opportunity, in any part of the day, of holding any converſation with one another without the preſence of ſome of the young ladies. And yet it muſt be obvious, that they muſt very often
E have been deſirous of communicating privately with one another concerning their joint intereſts, even if there had not been particular circumſtances which frequently rendered this neceſſary.

The purſuers have ſtated, that they had formed a very ſincere friendſhip for one another; and Miſs Pirie, in particular, being
F naturally of warm and quick feelings, felt, and frequently expreſſed her regard for Miſs Woods, in terms of peculiar warmth. But it is neceſſary to inform your Lordſhips, that there were occaſional differences between them, and a particular ſource of jealouſy, which had at laſt determined them to ſeparate. As al-
G ready obſerved, the greater part of the money by which the eſtabliſhment was formed belonged to Miſs Pirie. She did not join the ſchool for ſix months, and in the mean time Mrs Woods and Miſs Woods had begun the ſchool. Miſs Pirie believes, that Miſs Woods was embarraſſed by her connection with her aunt. But
H not to go more into particulars than the neceſſity of the caſe requires, Miſs Pirie, upon finding that the tradeſmens' bills were made out in the names of Mrs and Miſs Woods, conceived that ſhe was ill uſed, being held out to the public as a governeſs to Mrs Woods, when ſhe was in fact herſelf miſtreſs of the ſchool.
I A certain degree of jealouſy being excited by this circumſtance, various incidents were conſtantly occurring by the interference of

Mrs

Mrs Woods to increaſe it, and it gave riſe to various diſputes, and even altercations between the purſuers; and the matter went ſo far, by the end of Auguſt, that Miſs Pirie declined meeting with or converſing with Mrs Woods, who, it was at laſt determined, ſhould leave the houſe at Martinmas.

Of the reality of theſe diſſentions the purſuers produce the moſt undoubted evidence, part of which was already read in your Lordſhips' hearing, and more can be obtained, if neceſſary.

But, on the other hand, Miſs Pirie was always ſenſible, that the fault did not lie ſo much with Miſs Woods as with her aunt, and that ſhe found great difficulty to extricate herſelf from the embarraſſment on her account. Hence, though Miſs Pirie was frequently irritated, and led to ſay harſh things, her regard for her was never in reality abated; but, on the contrary, from natural warmth of diſpoſition, ſhe uſed, after ſuch quarrels, to be equally eager to be reconciled to Miſs Woods, and to remove the unhappineſs which ſhe ſaw their differences produced. Hence there was read to your Lordſhips a note written by Miſs Pirie to Miſs Woods, which was delivered to her with a bible, and expreſſed in theſe terms: 'Accept, my beloved, of that book, which can give 'conſolation in every ſituation; and, deareſt *earthly* friend, never 'open it without thinking of her, who would forego all friend-'ſhips but her God's, to poſſeſs yours. Ever your own. (Sign-'ed) JANE PIRIE. *October* 12. 1810.'

The nature of this note, and the preſent which accompanied it, are utterly inconſiſtent with the poſſibility of there being any vicious habits connected with the friendſhip and intercourſe of the purſuers. The perſon who wrote that note, certainly never meaning it to be ſeen by any one but Miſs Woods, is not the perſon of whom it can be reaſonably believed that ſhe ever harboured ſuch a thought as the invention of the defender, or her informers, has ſuggeſted.

But farther, to ſhew your Lordſhips that Miſs Pirie's mode of expreſſing herſelf was the reſult of her natural character, the purſuers beg leave here to inſert an extract of a letter which was written by Mrs Hamilton, before Miſs Pirie went into the family of Mrs Macdowall Grant. 'I am happy to find that Miſs Pirie 'has the proſpect of getting into a ſituation where her abilities 'as a teacher will be juſtly appreciated. I from my own expe-'rience have reaſon to think of them very highly. Whatever 'ſhe profeſſes to teach, ſhe teaches thoroughly. Her endeavours

'to

A ‘ to facilitate the progreſs of her pupils are unremitting, and
‘ conſequently ſucceſsful. To her character and conduct I can
‘ likewiſe bear the moſt ample teſtimony. *Nor, though her temper*
‘ *is ardent*, did I ever find that it ever hurried her into impa-
‘ tience. In all that related to her pupils I found her always
B ‘ willing to receive advice, and to follow any plans that I ſug-
‘ geſted; and, in a word, that ſhe conducted herſelf truly to my
‘ ſatisfaction. With ſuch a mother as you deſcribe Mrs Grant
‘ Macdowall to be, I ſhould not ſuppoſe that young ladies would
‘ require more from a governeſs than Miſs Pirie can aſſuredly
C ‘ beſtow.’

The differences and diſputes between the purſuers being at their height during the whole period comprehended in the defender's condeſcendence, your Lordſhips will alſo recollect, that the purſuers had no opportunity of converſing together, or of ei-
D ther expreſſing their ſources of jealouſy, or ſettling their differences, excepting late at night and early in the morning. On ſome occaſions, their converſations at theſe times were very far indeed from being diſtinguiſhed by too much kindneſs to one another, and, at others, their anxiety to make amends for harſh ex-
E preſſions formerly uſed, was naturally proportioned to their previous irritation.

At the ſame time, it is to be obſerved, that they were naturally extremely anxious, as far as poſſible, to prevent their diſputes from being known in the ſchool, or interfering with the education or
F comfort of the young ladies.

The purſuers have now ſtated their own hiſtory,—their previous characters,—their connection,—the eſtabliſhment and progreſs of the ſchool,—the arrangements by which it was conducted,—and their own particular ſituation at the time when the facts
G ſtated in the condeſcendence are averred to have happened.

They muſt next beg the attention of your Lordſhips, and, with great earneſtneſs, to the plan of the houſe,—the manner in which the beds were diſpoſed,—and by whom, and under what circumſtances they were occupied. They indeed truſt, that your Lord-
H ſhips will take the trouble of individually looking at the premiſes; and, they are to ſubmit, that if a proof ſhall be allowed, at leaſt a part of it *ought to be taken within the walls of that houſe.*

Deſcription of the Houſe.

Referring to a ſketch herewith ſhown, your Lordſhips will ſee that the houſe conſiſts only of two ſtoreys and a ſunk ſtorey, and

See hand-ſketch ſubjoined.

I fronts the ſouth. In front is a ſmall garden or graſs plot, ſurrounded by a wall. At each end of the front there is a door entering

tering from the garden by ſteps. The firſt floor conſiſts of the drawing-room, ſchool-room, and a ſmall room or cloſet in which the maſters who attended left their great-coats, &c. There is no *paſſage in the whole houſe* running from end to end. On entering at the eaſtmoſt door, there is, on the left, the door of the drawing-room, which is cloſe by the *front wall; directly oppoſite*, on the other ſide of the drawing-room is another door, which leads into the ſchool-room. The fire place in the drawing-room is about the centre of *the wall which divides it from the ſchool-room*. At the back-end of the drawing-room a piano forte ſtands, and upon the ſame ſide of *the fire-place* a ſofa, generally turned outwards from the wall. There is no *other door* to the drawing-room but the two which have been mentioned, cloſe by the front-wall, and there are two windows which occupy a great part of the ſpace of that wall.

From this deſcription of the drawing-room, it is obvious, that no perſon *could, by poſſibility*, ſee through *a key-hole* of either door to the ſofa. But what is fully as remarkable, it ſo happens, that in the one door there is *no key-hole at all;* and, in the other, though there is a key-hole on the *outſide*, it does not penetrate to the inſide, but is *completely cloſed* by a braſs lock, in the old faſhion.

There is nothing remarkable about the ſchool-room at the end of it.

At each end of the houſe there is a ſtaircaſe leading up from the firſt floor to the bed-rooms.

In the bed-room floor there is *no paſſage*. Upon aſcending the ſtair at the eaſt end by the drawing-room, you enter firſt into a ſmall ſquare room, which was uſed as the general dreſſing-room for the houſe; a large table ſtanding in the middle, and cheſts of drawers being ſet all round, &c. At the north-weſt corner of the room there is an entry into a dark cloſet, through which there is the *only* entry to the other rooms. From this cloſet you go into the firſt bed-room, which was occupied by Miſs Woods.

This room meaſures preciſely ſixteen feet nine inches by twelve feet. It has one window upon the front-wall. On each ſide of the window is a bed of conſiderable ſize, the heads of the beds ſtanding to the wall. A third bed is placed at the foot of one of them, not farther diſtant than *two feet and a half*. The two larger beds are *within four feet* of one another.

Now obſerve, that at the time when Miſs Munro was in the ſchool, ſhe and Miſs Woods ſlept in one of the large beds, viz.

A that on the eaſt ſide of the window. In the bed immediately oppoſite ſlept Miſs Cunningham, aged fourteen, and Miſs Hunter; and in the ſmall bed, at the foot of the other, the two Miſs Edgars, aged eleven and fourteen, ſlept. Thus in a room ſixteen one-half feet by twelve, there were *six* perſons. One of them in the ſame
B bed with Miſs Woods, and all almoſt in contact with that bed; at the lower end of the room was a cheſt of drawers.

Directly oppoſite to the door entering to this room from the cloſet is a door leading into Miſs Pirie's room. The wall between them is pretty thick.

C Miſs Pirie's room is a little irregular; but its dimenſions are about ſixteen feet nine inches, by thirteen feet nine inches. There are two windows in it in front. In this room there are three large beds. One was placed in the north-weſt corner, the head being to the back wall. In this bed Miſs Cumming and Miſs Pirie
D ſlept. *Alongside of it, in the ſame poſition*, was another bed of the ſame ſize, in which Miſs Stirling of Kippenroſs, a lady of *ſixteen*, ſlept by herſelf. And your Lordſhips will be pleaſed to obſerve, that the diſtance between theſe two beds, is *leſs than eighteen inches.*

N. B. The meaſurements were taken with a foot rule by the writer of this paper.

E At the farther corner of the room, there was a third bed, which was ſucceſſively occupied by Miſs Cunningham, Miſs Anſtruther, and at laſt by the two Miſs Fraſers.

After the Miſs Fraſers came to the ſchool, which was within a fortnight of its being broke up, a bed was put up in the dreſſing-
F room, in which Miſs Anſtruther ſlept, when not at home with her mother, which ſhe ſometimes was, and then Miſs Woods ſlept in it along with her. A door opens from this room to the weſt ſtaircaſe; and at the end of the ſame room is a ſmall room, which was occupied by Mrs Woods, and which is divided from the other
G by a *lath partition of only four inches in thickneſs.*

With this view of the premiſſes, your Lordſhips will recollect, that Miſs Woods ſupped with her aunt in the ſmall room laſt-mentioned, and that in going to her own bed-room, ſhe neceſſarily paſſed through the room of Miſs Pirie, and on the other hand, that
H Miſs Pirie, after having ſupped below ſtairs, and adjuſted her night dreſs in the general dreſſing-room, neceſſarily paſſed through the room of Miſs Woods in paſſing to her own room.

The purſuers do not at preſent mean to go into the particular effect of all theſe circumſtances upon the ſtatements of the defend-
I er. The general effect is very obvious, 1*ſt*, That it is a very incredible thing, that the purſuers, ſuppoſing them to have formed ſuch

ſuch notions as are attributed to them, ſhould have wilfully thrown themſelves into ſuch circumſtances of manifeſt and certain detection. *2d*, That there was nothing whatever extraordinary, either in Miſs Pirie being ſeen in the room of Miſs Woods, or Miſs Woods being ſeen in the room of Miſs Pirie, after either of them was in bed, as there is no doubt that that neceſſarily happened every night. *3d*, That in rooms where ſo many women were crowded together in a ſmall ſpace, and moſt of them half aſleep, the purſuers even, without attributing direct malice, could ſuppoſe very trivial circumſtances, with a lively and well inſtructed imagination, to account for much the greateſt part of the alleged facts ſtated in the condeſcendence; but, *4th*, That Miſs Cumming had ſlept in the ſame bed with Miſs Pirie for the beſt part of a year, during which time, Miſs Woods muſt very frequently, indeed, have paſſed through the room; and in paſſing, converſed with Miſs Pirie, without one whiſper or inſinuation being heard, either by the friends of the young lady, or by any one elſe to the prejudice of the purſuers.

On the contrary, the purſuers will have no difficulty to ſhow, that both Miſs Munro and Miſs Cumming, during the whole time, profeſſed not only ordinary reſpect, but very ſtrong gratitude and affection towards the purſuers. And in fact, as they approached to the end of the firſt year of their undertaking, they found it to be in the moſt proſperous ſtate. They had the utmoſt poſſible reaſon to be gratified by the opinion entertained by thoſe who had entruſted their children to their care; and though the unlucky circumſtance above explained, had created diſſenſions between them, they had ſettled that matter in the only way in which it could be ſettled by the removal of Mrs Woods; and they looked forward anxiouſly to the advantages of a more cordial ſyſtem, and to a certainty of diſtinguiſhed ſucceſs in the courſe of the ſeaſon, which was about to commence.

It was in theſe circumſtances, that, without notice, without inquiry, without communication of any ſort, the defender thought fit, not merely to withdraw her own grandchild and the other ladies under her particular care, but painfully and anxiouſly to circulate cards, and indirectly other verbal communications, which, by dark and ſtudiouſly obſcure inſinuations, were directed to fix upon the purſuers ſome odious and deteſtable crime, of which the imaginations, not to ſay the experience of the public, could hardly form a conception. It is almoſt unneceſſary to ſay, that the inſtant conſequence of ſuch a ſtatement, was the utter and irretrievable

A retrievable ruin of the purſuers, in the profeſſion to which they had devoted their whole lives.

And, whatever may be the reflections of the defender, it never will be forgotten, and never can be too often ſtated in this cauſe, that though reſident in the ſame place, ſhe made theſe publica-
B tions, and brought this ruin upon the purſuers, without having once communicated with them,—without having once ſtated to them what had been alleged to their prejudice, or put it in their power either to explain the circumſtances told to her, which might have been thought ſuſpicious, or to contradict by evidence
C or by circumſtances, ſhowing an impoſſibility, the abominable imputation which had been conveyed to her. Without meaning to ſay more than the vindication of themſelves fully warrants, the purſuers will ſubmit, with moſt perfect confidence, to any man who knows what juſtice and good feeling are, Whether it is poſ-
D ſible, by any caſuiſtry, to excuſe ſuch a proceeding. The purſuers do not here ſpeak of the truth or falſehood of the ſtatement. The atrocity of the crime alleged, inſtead of palliating, increaſes ten fold the injuſtice of the mode of dealing with it. For it was evi-
dent, that the mere whiſper of ſuch a thing, whether true or falſe,
E was both ruinous to the purſuers, and highly injurious to every pupil who had been under them; and the extravagance of the thing itſelf, ought to have raiſed *infinite doubts* and diſtruſt in the mind of Lady Cumming, which ſhould have led her firſt of all, and before communication with any other individual, to communicate with the
F purſuers themſelves. The defender was not a perſon who required to conſult either with her daughter or others, before ſhe could act or inquire in the proper channel upon ſuch a caſe. With all humility, the purſuers muſt ſay, that their previous character, the knowledge which the defender had of them, and the reſpectable
G families, whoſe eſteem and patronage they enjoyed, well entitled them to expect, that the defender ſhould totally have diſcredited the ſtatement, until at leaſt ſhe had required an explanation from themſelves, after ſtating to them plainly the circumſtances which ſhe had not thought it improper or indelicate to liſten to, from
H her own grandaughter.

And the purſuers will be much deceived, indeed, if any one of your Lordſhips can entertain a doubt upon this point.

But the matter went farther than this. The purſuers ſaw themſelves to be ruined by the means of the defender; and by the
I candour of Lady Cunningham, they were informed of the perſon to whom they muſt attribute the blame. But they remained as

ignorant

ignorant as before of the cauſe from which it proceeded, of which, A
indeed, their own minds or imaginations could never have ſug-
geſted the idea. Miſs Pirie went to the houſe of Lady Cumming,
in hopes of ſeeing her. She refuſed to ſee her; and Miſs Pirie
having ſeen her daughter, entreated her with tears and prayers,
even upon her knees, to be only informed what it was, upon the B
ground of which ſuch ruinous meaſures had been directed againſt
them. She was thought, it would ſeem, too odious a perſon to be
even told what it was ſhe had committed. The purſuers then
wrote a card to Lady Cumming, humbly, but very earneſtly ſoli- Nov. 15. 1810.
citing an explanation. But it would appear, that the defender C
thought it dignified or becoming to give no anſwer to two help-
leſs individuals, who thus appeared to be ruined by her inſtru-
mentality. Then Miſs Pirie, almoſt in diſtraction by the perſe-
vering myſtery which was hung over her, wrote the following
letter to Miſs Mary Cumming, which ſpeaks too powerfully for D
itſelf to admit of commentary or illuſtration:

'If ever you expect mercy from the God of mercy, tell what Nov. 16. —
'your niece has ſaid to injure two innocent perſons, who have
'laboured for nearly twelve months to improve her in every re-
'ligious and moral virtue, and who are thus cruelly repaid by her. E
'We never did any thing to offend her, except too rigidly diſ-
'charging our duty towards her, and too freely telling her of her
'faults. You are again implored, for the ſake of that God from
'whom *you hope* for mercy, to tell us of what ſhe accuſes us, as
'the calumny has been traced to her, and ſhe appears to be the F
'ſole author of it. If ever Chriſtian mercy or pity had place in
'your heart, do not delay to ſtate all ſhe ſays againſt us, as every
'hour's delay increaſes the miſery ſhe has already occaſioned.'

As this application alſo failed in obtaining that to which the
moſt deteſtable of criminals would have been entitled, Miſs G
Pirie's ſiſter, to whom even the defender has attributed no impro-
priety, called for the purpoſe of requiring an explanation; and
though it is preſumed the defender will not ſay that ſhe could
have ſuffered any pollution from communicating to *her* what ſhe
had *already communicated to ſo many others*, it ſeems, that the pur- H
ſuers and their friends were the only perſons to whom ſuch infor-
mation could not be conveyed.

Having tried all theſe means, the purſuers, ſtill in abſolute igno-
rance of what it was that was charged againſt them, and knowing
only by the dark hints which their friends were able to collect I
that it was an imputation of the laſt atrocity, ſaw themſelves com-

A pletely ruined, while they were conſcious only of having laboured with inceſſant pains for the good of thoſe to whom they were obliged to attribute their misfortunes. But humble though they were, not being at all prepared to ſubmit without a ſtruggle to ſuch accumulated injuſtice and oppreſſion, they by good advice raiſed
B this action for damages againſt the defender.

The purſuers paſs over all the propoſals which, for the ſake of the public manners, were made for ſettling the matter out of Court. The reſult certainly was, that nothing would ſatisfy the defender unleſs the purſuers would ſubmit to perpetual diſgrace, and quiet-
C ly leave the country.

The cauſe, however, having come into Court, defences were at laſt given in. For the firſt time, the purſuers learned with certainty, though in a very looſe and vague manner, the nature of the charge againſt them. It was ſtated generally, 'that they
D 'practiſed together acts of groſs immorality and ſhameful in-'decency.' To this no anſwer could be made, but that it was falſe.

After this, various hearings took place before Lord Meadowbank, Ordinary, who was pleaſed to appoint the caſe to be heard
E with ſhut doors, on account of the manifeſt contamination of the public morals, which the public hearing of ſuch a caſe would produce.

The purſuers cannot paſs to the laſt ſtage of the cauſe to the condeſcendence now to be anſwered, without adverting to the na-
F ture of the original ſtatements, and the manner in which they have been varied from time to time. The ſpecification in this condeſcendence is the *fifth* ſtatement of the facts in which the de-
Dec. 13. 1811. fender relies. One ſtatement was given at the firſt hearing before the Lord Ordinary, which no doubt was extremely glowing and
G minute, containing deſcriptions which appeared to have more reſemblance to the imaginary deſcriptions contained in obſcene books and books of caſuiſtry, not borrowed from the life, which were gravely referred to as authorities, than to any thing that ever exiſted in actual ſociety; and from the Lord Ordinary's Notes, your
H Lordſhips will have ſeen, that this ſtatement was ſo given as to make his Lordſhip and others preſent believe, that Miſs Cumming had ſeen with her eyes the groſs facts which were deſcribed in ſuch lively colours. At the ſame hearing, it was moſt pointedly averred, that Lady Cumming could not be conſidered as the pro-
I pagator of the calumny, becauſe the matter had been previouſly well

well known to the people at the Water of Leith, and particularly that the purſuers could *not go out without being hooted at.* A

Lord Meadowbank appointed a ſecond hearing, and then a very conſiderable part of the former ſtatement was departed from, or otherwiſe explained. It now turned out, that Miſs Cumming did not pretend to have *ſeen* any thing, and it did not appear poſſible B that the material circumſtances averred could otherwiſe be known to her. *The whole ſtory about the women at the Water of Leith was alſo now given up.* But the purſuers do not go into the minute particulars of theſe contradictions, becauſe the Lord Ordinary was ſo much impreſſed with them, as to think it neceſſary to fix the defender C to a written ſtatement of facts, before bringing the cauſe before your Lordſhips. Such a ſtatement was given in; and being the third, differed in various reſpects from the two which had preceded it. Jan. 19. 1811.

Even that ſtatement was afterwards departed from in the hearing before your Lordſhips. And the condeſcendence now lodged, D which is the fifth ſtatement of the facts alleged, differs *moſt eſſentially* from *all* thoſe that have preceded it, and is infinitely feebler than any one of them. The purſuers' counſel told your Lordſhips at the hearing, that the defender *would not dare* to give in a E condeſcendence, which your Lordſhips would receive. And now, let the condeſcendence be compared, not with verbal ſtatements, which may be alleged to have been miſconceived, but with the written ſtatement of the defender. Feb. 16. 1811.

The moſt material parts of the ſtatement are retracted or ſuppreſſed. But the purſuers muſt direct the particular attention of F the Court to the following part of the ſtatement; and they humbly truſt that it will never be forgotten in this cauſe, *that ſuch a ſtatement was deliberately given* by the defender *upon the ſame authority* which ſhe gives for *every one* of her other aſſertions. G

'A ſervant maid in the houſe *repeatedly ſaw* Miſs Woods and 'Miſs Pirie in improper ſituations, and uſing indecent familiarities 'with each other.

'The morning after Miſs M. was firſt diſturbed, as before rela- 'ted, ſhe roſe earlier than uſual, and was firſt in the ſchool-room. H 'The maid alluded to was doing up the room, to whom Miſs M. 'ſaid, that ſhe had ſlept ill, and had a dreadful night. The maid 'underſtood her at once, and ſaid, laughing, 'It is a pity they can- "not get a man, but that they will never get!" Two or three of 'the eldeſt girls came down ſoon after, and all joined in ſpeaking 'of what had happened. The maid informed them, that one day

'going

A ‘ going to ſeek for ſomething wanted for the houſe, ſhe found both
‘ the drawing-room doors locked, *and looking through the* KEY-
‘ HOLE, *ſhe ſaw* Miſs Woods and Miſs Pirie lying on the ſofa in
‘ an improper manner.

‘ One morning after this, the maid came to the ſchool-room
B ‘ door, and told ſome of the girls that ſhe had juſt caught Miſs
‘ Woods and Miſs Pirie in the very act, having gone in upon them
‘ abruptly. She ſaid, that Miſs Pirie leapt out of bed immediate-
‘ ly, half dreſſed, and that Miſs Woods hid herſelf under the bed-
‘ clothes. When ſhe had told this, ſhe ſaid, ‘ When I come in with
C “ the kettle at breakfaſt, notice what like their faces are.’ When
‘ ſhe did ſo, the young ladies obſerved that they avoided looking
‘ at her, and that Miſs Pirie appeared much agitated.

‘ The maid often ſaid they were brutes, and worſe than brutes,
‘ naſty brutes ; *and before the girls ſhe put out her tongue at them.*’

D The defender will not ſay that this ſtatement, or any part of it, was put down from her own invention. She *muſt ſay* that ſhe was ſo told by Miſs Cumming.

Then obſerve, 1*ſt*, That the whole is known to be a falſehood ; and the purſuers preſume, the defender knows that at this inſtant
E the maid would contradict every word of it. But, 2*d*, Her contradiction is not wanted ; for the purſuers have already ſhewn your Lordſhips, that the fact *minutely* and carefully detailed is not morally, but *phyſically impoſſible*. From the ſituation of the doors of the drawing-room, it was utterly impoſſible that any perſon
F could ſee the ſofa through a key-hole in either door ; but beſides this, there is *no key-hole to look through* in either door, nor any other hole which could anſwer the ſame purpoſe.

Now, your Lordſhips are requeſted to look at the condeſcendence. You will find, that every word and ſyllable of this ſtate-
G ment is retracted. 1*ſt*, In the ſtatement it was averred generally, that a ſervant maid repeatedly ſaw the purſuers in improper ſituations, &c. 2*d*, It was pointedly averred, that the ſame ſervant maid, on the morning when it is moſt abſurdly ſaid Miſs Munro roſe earlier than uſual, told all the elder girls, that one day ſhe
H had found the drawing-room doors locked, ‘ and looking through
‘ the key-hole, ſhe ſaw Miſs Woods and Miſs Pirie lying on the
‘ ſofa in an improper manner.’ 3*d*, It was pointedly averred, that on another occaſion, the ſame maid had told the girls, ‘ That ſhe
‘ had juſt caught Miſs Woods and Miſs Pirie in the very act.’
I 4*th*, It was pointedly averred, that after this information from the maid, the purſuers avoided looking at her at breakfaſt, and Miſs Pi-

rie appeared much agitated; and, *last* of all, it was averred, that this maid had applied abuſive epithets to the purſuers, ' *and before* ' *the girls ſhe put out her tongue at them.*'

Theſe were by far the moſt pointed averments in the whole ſtatement; for that ſervant maid is ſtill in Edinburgh, and if there had been *any* truth in the ſtatement, the defender had direct means of proof.

But of all this there *is not one word* in the condeſcendence. Even that which *is* ſtated with regard to this maid is utterly falſe. But every thing material imputed to her is abſolutely abandoned in the condeſcendence.

The purſuers eaſily underſtand *why* it is abandoned. But they muſt be permitted to aſk upon what authority it was ſo ſtated? Theſe things are a great deal too ſpecial to have come into ſuch a paper by accident or miſtake. They *muſt* have been aſſerted by *Miss Cumming*. And when it is ſhewn that the material part of them is *impoſſible*, and *the whole retracted*, your Lordſhips will draw the inference, which is abſolutely *inevitable*, that the other parts of the ſtory are equally indebted to the invention of the ſame individual.

There are other points in which the condeſcendence ſubſtantially retracts the averment in the ſtatements. In particular, in the original hearing, the Lord Ordinary was made to think that Miſs Cumming had ſeen what was aſſerted, particularly the lifting up of the ſhifts. When this was departed from, or otherwiſe ſtated, the defender, in the written *ſtatement*, ſaid, upon which Cumming ' *felt* Miſs Pirie put down her hand and lift up her ' ſhift, ſo that Miſs *Cumming felt her naked ſkin.*' This was neceſſary to account for the ſtory; but there is no ſuch ſtatement in the condeſcendence. It has now dwindled into this, ' upon which Miſs Pirie put down her hand and lifted up her ſhift.'

The purſuers aſk, Why was the phraſe changed? Why is it not ſaid that Miſs Cumming *felt* Miſs Pirie put down her hand? and, Why is it not ſaid that Miſs Cumming *felt Miss Pirie's naked ſkin?* Can your Lordſhips reſolve this in any other way than by the manifeſt fact, that the defender knew that the ſtatement could not be ſo proved; and as the purſuers propheſied, *dared not* to give in a condeſcendence ſuch as they pretended to threaten.

Your Lordſhips will find other inconſiſtencies, and other generalities, which the purſuers do not think it neceſſary now to go into more minutely.

The purſuers did not oppoſe the order for a condeſcendence, becauſe they wiſhed to fix the defender to ſomething definite.

A Now that it is given in, they truſt, that, even ſuch as it is, it will be put to the teſt of a proof. And truſting that your Lordſhips will recollect the unexampled tergiverſation of the defender, and the one moſt *certain falſehood* which has been detected, they proceed, with the humble confidence of innocence, to anſwer articu-
B lately, the ſpecial averments ſtill contained in the condeſcendence.

In anſwering it, the purſuers again entreat your Lordſhips to recollect the form of the houſe, the ſituation of the rooms, and the ſituation of the beds in thoſe rooms. Two ſmall rooms were
C crowded with half-a-dozen perſons in each, and each of the purſuers had uniformly, but without the leaſt neceſſity, one of the young ladies for a bedfellow; and, what is very remarkable, Miſs Munro and Miſs Cumming were the two *eldeſt* in the ſchool. Can any credulity imagine, that when there was nothing to have hin-
D dered the purſuers from ſleeping together conſtantly, and a hundred ways in which they could have gratified the propenſities imputed to them without ſuch frantic publicity, they ſhould have purſued a courſe which muſt of neceſſity have led to almoſt inſtant detection? The purſuers are moſt perfectly confident, that
E if your Lordſhips were once to look at the rooms for an inſtant, you would be ſtill more ſatisfied than the Lord Ordinary was at firſt of the moral impoſſibility of the whole ſtory.

The purſuers come to the particular articles of the condeſcendence.

F 1*ſt*, Miſs Cumming was boarded with the purſuers, not merely in ſummer and autumn 1810, but from December 1809 till November 1810.

2*d*, This article is true, as the purſuers have already particularly deſcribed.

G 3*d*, The defender is pleaſed to require the purſuers explicitly to confeſs or deny this article. But the article conſiſts of different parts. 1*ſt*, It is ſaid, that between the end of July and beginning of November, Miſs Woods, on various nights, *went into the room* in which Miſs Pirie and Miſs Cumming ſlept. There can be
H no doubt about this, becauſe, whenever Miſs Pirie was in bed before Miſs Woods had left her aunt's room, where ſhe always ſupped, Miſs Woods of neceſſity paſſed through the room where Miſs Pirie and Miſs Cumming ſlept. But it is not immaterial, that on theſe occaſions Miſs Woods was in *her day dreſs*, as ſhe did not
I undreſs till ſhe went to the other end of the houſe. The purſuers will tell the defender alſo, that on theſe occaſions Miſs Woods ſometimes ſtopped to converſe with Miſs Pirie, having had no

other

other opportunity in the courſe of the day. But 2*d*, It is averred, A
that Miſs Woods lay down in the bed with Miſs Pirie. This
happens to be entirely untrue, as ſhe *was never in bed.*

In like manner, it is averred, that Miſs Pirie occaſionally went
into Miſs Woods room, and lay down in bed with her and Miſs Mun-
ro. As already explained, Miſs Pirie generally ſat up pretty late, B
both from other cauſes, and for a reaſon to which it is with pain
ſhe alludes, that ſhe would not have choſen Miſs Cumming for
a bedfellow, if it had been in her power to arrange matters
otherwiſe. It has alſo been explained, that Miſs Pirie, after ad-
juſting her head-dreſs, waſhing her hands, &c. in the dreſſing- C
room, neceſſarily paſſed through Miſs Woods room in going to
her own. On theſe occaſions ſhe had always a candle with her,
which ſhe ſet down lighted, and generally had on a *petticoat*,
wrapper, *ſtockings* and *ſhawl*. And it is true, that ſometimes
when ſhe found Miſs Woods awake, ſhe ſat down to converſe D
with her, and has ſometimes gone there on purpoſe when ſome
diſagreement had ariſen in the courſe of the day, upon which ſhe
had had no opportunity of coming to an explanation.

The purſuers preſume, this is an explicit anſwer to the ſtate-
ment. But leſt the defender ſhould think ſhe makes a diſcovery E
of great conſequence, they will tell her farther, that it is not im-
poſſible, that on ſome of theſe occaſions, Miſs Pirie, in the dreſs
above mentioned, with the candle ſtanding on the drawers, and
five young ladies in the room, may, in place of ſitting erect upon the
bed, have reclined, and even partly covered herſelf with the F
blanket in cold weather, while ſhe continued her converſation
with Miſs Woods. If it be proof of a crime, or of ſome criminal
purpoſe, that one *woman* ſhould uſe this freedom with another
woman, her intimate friend, with whom it was of great conſe-
quence to take the only opportunity ſhe had of converſing, what G
an atrocious crime muſt it be in Lady Cumming's eyes, for *one*
woman to ſleep a whole night in a naked bed with another? She is
welcome to the full value of the explicit ſtatement, which the
purſuers give without the ſmalleſt reſerve. As they have no-
thing to conceal they promiſe her, though not required, to be H
equally explicit in all the other articles.

Article 4*th*.—The fourth article contains a very ſpecific ſtate-
ment of ſomething which is ſuppoſed to be the very fact of the
crime alleged.

The purſuers cannot be certain, what it is upon which a lady I
whoſe imagination ſo eaſily ſupplied the ſtory of the ſofa and
the key-hole, has built this particular detail.

But,

A But, 1*st*, It is not true, as already ſtated, that Miſs Woods, ever within the time ſpecified, *lay down in the bed with Miss* Pirie and Miſs Cumming.

2*d*, She had always her *day-clothes on.*

3*d*, It is ſingular that no reference ſhould be made to *Miss* B *Stirling*, who ſlept within *a foot and a half* of the very ſpot where Miſs Woods is ſuppoſed to have lain down.

But, 4*th*, The purſuers preſume they can inform your Lordſhips of the trivial circumſtances upon which this ſtory is propably built. It was mentioned, in deſcribing the houſe, that C the partition between Miſs Pirie's room and that of Mrs Woods, is a mere lath partition, only four inches thick. It happened that Miſs Woods on one night ſat up late in her aunt's room, and as the differences between the parties were then at their height, Miſs Woods and her aunt talked a great deal, by which Miſs D Piric was kept awake. When Miſs Woods at laſt was paſſing through Miſs Pirie's room, the latter called to her to come and tell her what had been the matter. Miſs Woods came to the bed-ſide, where ſhe was equally cloſe to Miſs Stirling's bed. Miſs Pirie perceived that ſhe had been crying, and urged her to tell E the reaſon, and being herſelf much moved, thinks that ſhe kiſſed her cheek, which, it is humbly thought, was quite natural and innocent, conſidering their friendly and familiar habits, and the warm temper of Miſs Pirie. Miſs Woods declined to tell the cauſe of her emotion, and ſome converſation followed, conſiſting in an F attempt of perſuaſion on the one ſide and refuſal upon the other, the particular terms of which it is evidently quite impoſſible to recollect.

But Miſs Cumming waked by the *ſhaking of the bed.* As it is moſt certain that Miſs Woods was ſtanding on the *floor with her* G *her clothes on*, and with ſufficient light in the room to be ſeen by Miſs Cumming, it might ſeem very unneceſſary to go farther in anſwering the ſtatement. But the purſuers wiſh to ſtate every thing by which the imagination of Miſs Cumming might be aſſiſted. She knows well that Miſs Pirie was much afflicted with H rheumatiſm, and that ſhe had frequently employed *the ſervant to rub her back* on account of it. Before Miſs Woods went away, Miſs Pirie complained of rheumatiſm, and Miſs Woods offered to rub her back a little, which ſhe did for a minute or two. Miſs Cumming ſtarted as out of her ſleep, ſaying, what makes the bed I ſhake, and jumped out of bed, at which the purſuers were ſomewhat ſurpriſed at the time, but did not think of accounting for it. Miſs Woods was then ſtanding with all her clothes on, and

went

went quietly out of the room. But it was *after* Miſs Woods was gone, and *not before*, that Miſs Pirie deſired Miſs Cumming to turn to the other ſide of the bed. And as to this, it is very hard that Miſs Cumming ſhould force Miſs Pirie to remind her of what Miſs Pirie would moſt anxiouſly have kept to herſelf, that this requeſt as to the mode of turning was only what ſhe uniformly obſerved with Miſs Cumming, for reaſons which ſhe has no deſire further to explain.

Having given this full explanation of the other particulars, the purſuers have no heſitation in adding, that Miſs Pirie, hearing Miſs Woods ſeized with a fit of coughing, roſe and carried ſomething to her to ſtop it, and *instantly* returned to bed.

Article 5*th*.—This article is ſo indefinite, as not to admit of any definite anſwer. But the purſuers know of no circumſtances which could produce any ſhaking in Miſs Woods bed, other than Miſs Pirie's merely ſitting down upon the bed to converſe with her, as above mentioned.

Articles 6*th*, 7*th* and 8*th*.—The purſuers have no anſwer to make to theſe articles, but that they are entirely falſe, and they cannot even recollect the ſmalleſt circumſtance on which they can be founded.

9*th*.—As already ſtated, Miſs Woods never was in Miſs Pirie's bed, though ſhe ſometimes ſtood by the ſide of it converſing as ſhe paſſed through the room. No ſuch converſation as that detailed ever took place; and if Miſs Cumming's imagination or invention has had any thing to work upon at all, it muſt conſiſt in ſome very groſs miſrepreſentation of ſome converſation between the purſuers relative to their family differences. But it is enough that the purſuers peremptorily deny the ſtatement.

10*th*.—The firſt part of this article is correct. As to the bed ſhaking, the purſuers know of nothing, but that the bed being old, was not very firm, and eaſily made to creak. But it is ſingular that if any thing then happened (June and July 1810) of the nature here pretended, Miſs Cumming ſhould never have made any complaint, though ſhe was conſtantly going to Mrs Forbes's, and was there almoſt every Sunday, and alſo wrote to her grandmother or aunts.

11*th*.—This article muſt be founded either in Miſs Munro's ſuppoſed evidence, or on what Miſs Cumming has ſaid of it. As ſtated, it is totally falſe. But the purſuers recollect Miſs Pirie having ſtopped in paſſing through Miſs Woods room, to tell her of a letter ſhe had received. She did not go into bed at all, but ſtood on the floor, leaning on the foreſide of the bed, and they

talked for a long time. *It is not true that Miss Munro is deaf;* and the fact is, that she heard all the conversation that had taken place, and accordingly mentioned almost every thing at the time. But Miss Pirie being sorry for having disturbed her, shook hands with her, and wished both her and Miss Woods good-night.

B Article 12*th*.—It is believed, that on one occasion Miss Pirie had a very serious dispute with Miss Woods; and being very unhappy about it, after she was in bed, rose and went in her night-gown and petticoat, (which had always a *bunch of keys* fastened to it, rather an unlikely alarm to be carried about,) and awoke C Miss Woods, saying she could not sleep till they were friends. They had then some conversation; and it is true that they talked low, to avoid waking Miss Munro. But, as already said, it is not true that she is deaf.

13*th*.—This seems to be totally irrelevant. But, 1*st*, It would D have been better for Miss Munro, if she had any cause of complaint, to have mentioned it to Miss Stevenson, who took charge of her, than to a nurse or maid. 2*d*, Miss Munro, however, continued for *more than a month* after the time alluded to, not only without making any complaint, but expressing, both by words and E actions, her *respect*, *gratitude* and *affection* for both the pursuers. The pursuers are ready to prove, that she *anxiously contended for marks of attention* from the pursuers, especially at times of relaxation, and that she was heard to declare, that *she would bless the day she came to school at Drumsbeugh*.

F 14*th*.—This is so general, that it is impossible to make any answer to it, but a flat and as a general denial. If it has any meaning, it seems to be to enable the defender to fall softly from the averment about the sofa in the drawing-room.

15*th*.—This article is believed to be perfectly false, and, as it is G stated, impossible, according to the rules of the school. Miss Munro could not rise earlier than usual, or before the maid came into the room, though she might possibly be first in the school-room. But the statement, besides being irrelevant, is totally false, and will be disproved if necessary; and the whole article, like the for-H mer one, seems only calculated to add to the injurious nature of the calumny, at the very moment that the defender is departing from her specific averments.

The pursuers have now gone through all the articles of the I condescendence. And they persuade themselves, that it will appear to your Lordships that they have met it fully and fairly. Your Lordships will easily conceive that the condescendence contains

tains a moſt ſhocking ſtatement for them to be obliged to read and deliberate upon. They never knew before the full extent of the calumny. But they moſt confidently ſubmit themſelves to the juſtice of your Lordſhips, truſting that they will be protected againſt ſuch an unheard of ſlander; and that the defender will find, that it is no light matter to raiſe up, upon the moſt trivial and inſignificant circumſtances, aſſiſted by abſolute inventions, a charge impoſſible in itſelf, but in its character the moſt atrocious that it is almoſt poſſible to conceive. A B

The purſuers have omitted to advert to the ſingular hypotheſis, that the object of the purſuers was gradually to corrupt Miſs Cumming. They will only now remark, that they were never accuſed of corrupting any of the numerous pupils who have been under their care. And if ſuch, however groſsly abſurd, had been the object, it is very extraordinary that Miſs Cumming ſhould be the perſon fixed upon, when it is notorious, and can be eaſily proved, that Miſs Pirie never ſlept with Miſs Cumming when it was in her power to avoid it. C D

But once more, before concluding, the purſuers entreat your Lordſhips to recollect the ſituation into which they are brought, and the feelings which muſt be excited in honourable and virtuous minds by the peruſal of ſuch a condeſcendence. Futile and evaſive, therefore, as it is, they truſt, that for the vindication of their characters, a proof will be allowed. They know that the whole ſtatement will be completely diſproved, and thereby alone their characters completely eſtabliſhed, beyond the reach of any calumny of the defender. In reſpect whereof, &c. E F

(Signed) JAMES MONCREIFF.

Thereafter the following interlocutor was pronounced: 'The Lords having adviſed the condeſcendence for the defender, and anſwers thereto for the purſuers, appoint the defender, before further procedure, to be ready to ſay to-morrow, whether, under the fifteenth article of her condeſcendence, ſhe means to include an offer to prove the circumſtance related on the ninth page of the ſtatement, that the maid informed Miſs Munro, and ſome of the other girls, that ſhe had, through the key-hole, ſeen the purſuers lying on the ſofa in an improper manner, and the ſubſequent circumſtances related with reſpect to the converſation and conduct of the maid; or whether ſhe now means to abandon thoſe parts of her ſtatement.' In obedience to which appointment, the Honourable Henry Erſkine, for the defender, ſtated, 'That the defender does mean, under the fifteenth article of her condeſcendence, to include an offer to prove the circumſtances G March 8. ſigned 9th, 1811. H I J

'related

A ‘ related in the ſtatement reſpecting the converſation and conduct
‘ of the maid-ſervant, as alluded to in the interlocutor of Court.’
Mar. 9. 1811. Whereupon the Court pronounced the following interlocutor:
‘ The Lords having reſumed conſideration of the condeſcendence
‘ for the defender, and anſwers for the purſuer, with what is above
B ‘ ſet forth, Allow the defender a proof of the allegations ſet forth
‘ in her condeſcendence and minute, and to the purſuers a proof
‘ of the allegations contained in their anſwers, and to both parties
‘ a conjunct probation; and grant diligence *hinc inde*, to be re-
‘ ported againſt the firſt ſederunt-day in May next; and remit to
C ‘ the Lord Juſtice-Clerk, and the Lord Ordinary, with any other
‘ of the Judges who can conveniently attend, to take the ſaid
‘ proof; and diſpenſe with the minute-book.’

The parties accordingly extracted letters of incident diligence; and in virtue thereof, cauſed cite ſundry witneſſes, who having
D compeared before the Judges Commiſſioners, emitted the reſpective depoſitions after mentioned. Thereafter the parties gave in a joint petition to the Court, ſtating, *inter alia*, that before the proof in this action is declared to be concluded, the parties find it neceſſary to examine a few additional witneſſes. The witneſſes pro-
E poſed to be examined by the purſuers, are Miſs Thomſon, Mrs Kennedy of Dunure, Mrs James Dundas, and Mrs John Forbes; and thoſe whom the defender propoſed to examine were Mrs Campbell of Stonefield and Mrs General Anſtruther; and therefore *praying* their Lordſhips, for the reaſons therein ſtated, to renew the remit
F formerly made in this cauſe, for the purpoſe of leading the further proof to be adduced, and of new to grant diligence at the inſtance of both parties againſt witneſſes and havers; and upon advising this petition, the Court pronounced the following interlo-
May 16. 1811. cutor: ‘ The Lords having heard this petition, prorogate the
G ‘ term for proving for ten days from this date; grant warrant for
‘ letters of incident diligence, at the inſtance of both parties, a-
‘ gainſt the witneſſes within mentioned; and remit to the Lord
‘ Meadowbank, Ordinary, to examine ſaid witneſſes; and diſpenſe
‘ with the minute-book.’ The parties accordingly extracted let-
H ters of incident diligence; and in virtue thereof, cauſed cite the before-named witneſſes; who having appeared before the Lord Meadowbank, Ordinary, the reſpective depoſitions after inſert were emitted by thoſe who were examined.

Thereafter a mutual Note was given in for the parties, craving
I the Court to permit the proof to be printed, under the limitations, that a portion on whoſe ſecrecy dependence could be placed, ſhould

be

be procured to undertake the work; that the number of copies A
ſhould be limited to twenty; and that the whole of theſe, at the con-
cluſion of the cauſe, ſhould be deſtroyed, or otherwiſe diſpoſed of,
under the authority of the Court: And the counſel for the defender
ſuggeſted, that in addition to the above number of copies, twenty
more ſhould be thrown off, and kept under the controul of the B
Court, in caſe there ſhould be afterwards occaſion for them. Up-
on adviſing which Note, the following interlocutor was pronoun-
ced: 'The Lords having heard this Note, direct, that after the proof May 17. 1811.
' is cloſed, a prepared State ſhall be made up, and thereafter print-
' ed, under the limitation ſuggeſted in the Note, with the addition C
' propoſed by the counſel for the defender, under the proviſo, that
' the twenty additional copies be lodged under ſeal with the clerk
' at the diſpoſal of the Court, the agents being ſworn to the faith-
' ful implement of the regulation ſuggeſted.'

In the courſe of the proof, an objection having been ſtated by D
the purſuers to the admiſſibility of Margaret Little, who had been
a ſervant to Mr Raeburn at Deanhall, and to Miſs Margaret Dun-
bar, daughter of Sir Archibald Dunbar of Northfield, Baronet,
the legitimate grandaughter of the defender, witneſſes cited for
the defender, which were ſuſtained by the Judges Commiſſioners; E
the defender now preſented a PETITION to the Court againſt the PETITION for
interlocutors by which theſe objections were ſuſtained, and Defender.
craving, 'that it might pleaſe their Lordſhips to alter the interlo-
' cutors under review, and to allow the witneſſes above mention-
' ed to be examined in the cauſe.' Upon adviſing which petition, F
the Court pronounced this interlocutor: 'The Lords having heard June 6. ——
' this petition, appoint the ſame to be ſeen and anſwered, in ſo far
' as reſpects Miſs Margaret Dunbar's evidence, offered by the pe-
' titioner; but, *quoad ultra*, refuſe the deſire of the petition; ap-
' point the anſwers to be printed and boxed againſt this day G
' ſe'enight, with certification.'

Accordingly, anſwers to ſaid petition having been given in for
the purſuers, the Court, upon adviſing thereof, pronounced the
following interlocutor: 'The Lords having reſumed conſidera- June 11. ——
' tion of this petition, and adviſed the ſame, with anſwers there- H
' to, refuſe the deſire thereof *in toto*.'

Thereafter there was a petition given in for the purſuers,
praying their Lordſhips to circumduce the term for proving againſt
both parties, upon adviſing which, their Lordſhips, of this date, June 11. ——
circumduced the term.

And the whole proof adduced and writings produced, ſtand as I
follows:

DEFENDER'S PROOF.

At Edinburgh, 15th March 1811.

In preſence of the following Judges; the Right Honourable Lord Justice-Clerk, Lord Meadowbank, Lord Robertson, Lord Newton, and Lord Boyle, compeared for Miſſes Woods and and Pirie the Purſuers, Mr John Clerk, Mr Adam Gillies, and Mr James Moncreiff, Advocates, and Mr James Balfour, Writer to the Signet, their Agent; and for Lady Cumming Gordon, Defender, the Honourable Henry Erskine, David Cathcart, George Cranstoun, and John Hay Forbes, Eſquires, Advocates, and Mr James Mackenzie, Writer to the Signet, her Agent: and the Letters of Diligence and Execution thereof againſt Witneſſes being reported, and Mr Clerk having proteſted for Reprobators againſt the Witneſſes to be adduced for the Defender,

A Compeared Miſs JANET MUNRO, daughter of George Munro, Eſq; reſiding in Elder Street, Edinburgh, unmarried, aged ſixteen years; who being ſolemnly ſworn, and purged of malice and partial counſel, depones, That ſhe was a boarder at the boarding-ſchool of the purſuers at Drumſheugh: That ſhe went there about the
B beginning of September laſt: That ſhe ſlept with Miſs Woods from the beginning, and continued to do ſo until about a fortnight before ſhe came away. Depones, That during the time ſhe ſlept with Miſs Woods, Miſs Pirie oftener than once came into the bed: and the deponent believes her clothes were off, and that the
C one lay above the other, and that Miſs Pirie was uppermoſt: That there was no candle in the room. Depones, That upon the firſt of theſe occaſions, ſhe obſerved a ſhaking of the bed, and the bedclothes to ..ng about, and they ſeemed to be breathing high, and that ſhe felt the bodies of one or both of them in motion. De-

pones.

pones, That upon this the witneſs ſpoke to them, and ſaid, 'Miſs 'Pirie I wiſh you would go away for I can't get ſleep;' upon which Miſs Woods ſaid to Miſs Pirie, 'You had better go away 'Jane, for I am afraid you'll catch cold ſtanding there;' but at this time Miſs Pirie was ſtill in bed; and that Miſs Pirie then ſaid, 'I am not in the bed, I am only ſtanding beſide it;' and that B when Miſs Pirie made this anſwer, ſhe was ſtill in bed, but then got up and went away. Depones, That the witneſs mentioned what ſhe has now deponed to to Miſs Cumming, and ſhe thinks to Miſs Stirling, but is not ſure as to her; and that ſhe alſo mentioned it to Mary Brown, the nurſery-maid at home, who has been C long in the family of the witneſs's father. Depones, That Mary Brown's anſwer was, 'If it is true, it is dreadful;' and Mary Brown told the witneſs if it happened again ſhe ſhould ſpeak out and let it be known; and farther deſired the witneſs to let her know if it happened again. Depones, That ſome days after this, D but the witneſs does not exactly recollect how long, Miſs Pirie came another time to Miſs Woods' bed, and that upon this occaſion they lay in the ſame way, Miſs Pirie lying above Miſs Woods; and that upon this occaſion the witneſs obſerved the ſame ſhaking of the bed, motions and breathings as upon the occaſion already E deponed to. Depones, That there was no candle in the room, but ſome day-light came in, but there was no day-light on the firſt occaſion. Depones, That from the light ſhe ſuppoſes on this laſt occaſion it was about five in the morning, and that the light was ſufficient to allow her to diſtinguiſh any perſon in the room. De- F pones, That in order to make them ſenſible ſhe was awake, the witneſs coughed and turned herſelf: That upon this Miſs Woods turned to Miſs Pirie, and ſaid, 'I ſuſpect ſhe is awake;' and this was ſaid in a whiſper. Depones, That Miſs Woods began a coughing herſelf, and that ſhe ſaid to the witneſs that ſhe had heard her G coughing, and aſked if ſhe had been long awake; that the witneſs ſaid ſhe had, and that then Miſs Woods ſaid, 'I am afraid you 'have got a cold, if you'll get up and go to ſuch a drawer in the 'room, you'll get ſome barley ſugar:' That the witneſs ſaid ſhe did not want any; upon which Miſs Woods aſked her to get up H and go to the dreſſing-room and get her ſome water. Depones, That the witneſs accordingly got up and went and brought the water; and that before this, the witneſs, by means of the day-light, had ſeen Miſs Pirie in the bed; but when the witneſs returned with the water ſhe was gone. Depones, That next morn- I ing ſhe told the maid Charlotte that ſhe was very tired, that ſhe had

had been disturbed, and had got very little sleep; and that Charlotte seemed to understand her, and said, 'It is a pity they could not 'get a man:' And that Charlotte added, that one day wanting something for the family, she had gone to the drawing-room, but found both doors bolted; and upon looking through the key-hole,
B she had seen them together in an improper situation upon the sofa: That she did not mention particularly where the sofa was standing, but that it usually stands by the fire, and on the opposite side of the fire-place from the window; and that Charlotte added, that she had called through the door that she wanted something, and
C that they answered, she must wait a while, as they were busy. Depones, That Miss Margaret Dunbar was present when this conversation took place with the maid Charlotte, and that she is not sure if any body else was present. Depones, That the next time she went home to her father's, the nursery-maid Mary Brown asked
D her if any thing more had happened, and the witness told her just the same had happened, but without mentioning that it was daylight, or entering into any other particulars: That Mary Brown said it was most dreadful, and could not the witness get a bed to herself; and she added, that they should be burnt. Depones, That
E some time after the second occasion the witness has deponed to, but how soon or how long after she cannot remember, the maid Charlotte came down to the school-room, and told the witness and Miss Cumming and Miss Stirling, that she had caught the pursuers in an improper situation in the dressing-room upon one of the
F beds: That on her going into the room, Miss Pirie, with her face very red, leapt out of bed, and Miss Woods hid herself under the bed-clothes: That this was before breakfast, about eight o'clock: That some of the other young ladies were at the time in the room, but she does not think they heard this. Depones, That
G at that time there were two beds in the dressing-room, in one of which Miss Anstruther slept, and in the other Miss Woods, who had left the witness to sleep by herself: That Charlotte said she had got into the dressing-room, but did not say whether the door had been bolted or not; and that Charlotte desired the deponent
H and the other two young ladies to notice their faces and see what they looked like when she came in with the kettle at breakfast: That the witness did accordingly observe them when the family were at breakfast, and the witness thought they seemed to avoid looking at Charlotte, and even to look away from her: That Charlotte looked at them and made faces at them: That on more than one occasion, the witness has heard Charlotte speak disrespectfully

fully of them; and on one occaſion, ſhe remembers her talk of A
leaving them, and ſay, 'Who would ſerve ſuch miſtreſſes:' That
ſhe does not remember any particular abuſive expreſſion. Depones,
That ſhe has frequently through the day, and in the preſence of the
other ſcholars, obſerved the purſuers kiſſing, careſſing and fond-
ling each other, more than the witneſs thinks could have reſulted
from ordinary female friendſhip, and this both before and after
the firſt time, when, as above deponed to, ſhe perceived them in
bed together, and that their behaviour ſtruck her as extraordina-
ry even before that. Depones, That ſhe has alſo occaſionally
known them quarrel about the mode of conducting the ſchool, C
and even about trifles. Depones, That ſhe has had converſations
with Miſs Cumming about what had happened, and in particular
mentioned to her what had happened on one of the above occa-
ſions, when Miſs Cumming anſwered, that ſhe was accuſtomed to
be ſo diſturbed. Depones, That they agreed that Miſs Cumming D
ſhould tell her friends. Depones, That Miſs Cumming and the
deponent agreed that they would take ſome opportunity of giving
a hint to the purſuers that they were aware of what was going on;
and one day when they were out walking, Miſs Cumming ſaid to
the deponent, that ſhe was ſo tired with being diſturbed in the
night, that ſhe was hardly able to go on with her leſſons, and that
on returning from their walk ſhe would complain of it; and ac-
cordingly, when they returned, Miſs Cumming ſaid to Miſs Pirie,
that ſhe was exceſſively tired with being diſturbed in the night-
time; upon which Miſs Pirie's face grew very red, and ſhe turn-
ed her back, and ſoon afterwards went out of the room; and that
Miſs Cumming then obſerved to the deponent, 'Do you ſee how
'guilt is on her face?' Being interrogated, As it was agreed that
Miſs Cumming ſhould communicate to her friends what had hap-
pened, why the deponent did not communicate it to her own fa- G.
ther? depones, That ſhe did not like to do it. Depones, That
Miſs Stevenſon, daughter of the late Dr Stevenſon of Glaſgow,
took the deponent with her to receive the ſacrament on the laſt
occaſion in Edinburgh, and that the witneſs received it according- H
ly: That Miſs Stevenſon has taken a particular charge of the wit-
neſs ſince her mother's death. Depones, That the teaching in the
ſchool was over at eight o'clock, when the bell rung for prayers,
and immediately after prayers, all the ſcholars went to bed: That
Miſs Woods and Miſs Pirie did not go to bed at the ſame time with I
the ſcholars: That in every other reſpect, excepting as above de-
poned to, the witneſs was perfectly ſatisfied with her treatment at
the ſchool, and the inſtructions and example ſhe received there:

 That

3 weeks after
end of Sept or
early in Oct.

A That ſhe has not ſeen Miſs Cumming or Miſs Stirling ſince the ſchool broke up. And being interrogated for the purſuers, depones, That it was about three weeks after ſhe firſt came to ſchool, when ſhe, for the firſt time, obſerved the purſuers in bed together, as above deponed to, that is to ſay, ſome time about the end of
B September, and the ſecond time, ſhe thinks, would be early in October. And being interrogated, whether ſhe means to ſay, that ſhe never obſerved the purſuers in bed together upon any other occaſion? depones, That upon a former occaſion, prior to both of the above, ſhe waked in a fright, and thought there was ſome-
C body in bed with Miſs Woods, but could not be ſure of it, nor who it was. Depones, That the ſcholars roſe between ſix and ſeven in the morning, and that Miſs Woods and Miſs Pirie roſe ſoon after they had gone down ſtairs, and then came themſelves down ſtairs to the ſchool. Depones, That the firſt thing in the
D morning after the purſuers came down ſtairs, was prayers, after which the purſuers were occupied in hearing the ſcholars the leſſons they had to repeat, and this continued till breakfaſt-time, and that breakfaſt did not laſt half an hour. Depones, That after breakfaſt, the purſuers were alſo engaged in teaching the ſcho-
E lars, one the elder, and the other the younger claſs, and that this continued till they went out to walk at one o'clock. Depones, That the purſuers walked with the ſcholars week about, for an hour between one and two; and that immediately on returning from their walk, the family dined, which occupied about half an
F hour; and after dinner the purſuers ſat with the ſcholars working for two hours, and practiſing muſic, and ſome days the dancing-miſtreſs came in after dinner: That the family drank tea about ſix o'clock: That after tea, the ſcholars got their leſſons for the next day, and the purſuers remained in the room with them, and
G this continued till prayers. Depones, That the purſuers, week about, read prayers, and before prayers, one of the young ladies read a chapter from Mrs Trimmer's Hiſtory of the Bible. Depones, That the purſuers went up ſtairs with the young ladies after prayers, to help them to undreſs, but did not then undreſs
H themſelves. Depones, That after the young ladies were undreſſed, Miſs Woods heard three of the younger ſcholars ſay their prayers aloud to her in her own room, and ſhe underſtood the ſame rule was followed in Miſs Pirie's room. Depones, That ſhe thinks Miſs Woods uſually came to bed about eleven o'clock, but
I is not certain, as ſhe was herſelf often aſleep. And being interrogated, Whether ſhe knows whether Miſs Woods took any ſup-

did not undreſs when Scholars went to bed — went to bed about eleven.

per

per before coming to bed? depones, That ſhe believes ſhe did, as A
ſhe has ſometimes ſeen cold meat ſtanding in the ſchool-room
when ſhe came down in the morning. Depones, That ſhe knows
Mrs Woods, aunt to Miſs Woods, ſlept in a room adjoining to Miſs
Pirie's; but ſhe does not know whether the purſuers ſupped in
that room or down ſtairs. Depones, That upon the firſt occaſion, B
when ſhe perceived the purſuers in bed together, ſhe had fallen
aſleep before Miſs Woods came to bed, and did not perceive when
ſhe did ſo, and that ſhe was not awake when Miſs Pirie came in-
to the bed. Depones, That upon this occaſion ſhe had been
awake ſhe thinks about half an hour before ſhe ſpoke to them, as C
above deponed to, deſiring Miſs Pirie to go away. Depones, That
while ſhe was thus laying awake, ſhe heard a great deal of con-
verſation going on in whiſpers, but ſhe could not make any kind
of ſenſe of what they ſaid, though perhaps ſhe might pick up a
word here and there, though ſhe does not now remember. De- D
pones, That ſhe is poſitive, that upon that occaſion ſhe ſaid no-
thing more to them than to deſire Miſs Pirie to go away, for ſhe
could not get ſlept, although ſhe was once going to ſay ſomething
more, but did not do ſo. Depones, That in ſaying what ſhe did,
ſhe gave them no reaſon whatever to ſuppoſe that ſhe had but juſt E
awaked. Depones, That upon the ſecond occaſion alſo ſhe heard
converſation going on between them in whiſpers, but could not
diſtinguiſh what it was, unleſs as above deponed to, when Miſs
Woods ſaid to Miſs Pirie, ſhe ſuſpected the witneſs was awake.
Depones, That this did not appear to the witneſs to be in a higher F
tone than the reſt of the converſation; but the witneſs had at that
time turned round towards them to hear what they would ſay, as
ſhe ſuſpected that by that time they knew ſhe was awake. De-
pones, That ſhe thinks ſhe was longer awake the ſecond time than
the firſt, and that ſhe had coughed ſeveral times, to let them know G
ſhe was awake. Depones, That upon another occaſion, ſhe heard
the purſuers converſing ſomething about Miſs Stirling; but upon
that occaſion Miſs Pirie was not in bed. Depones, That upon this
laſt occaſion it was dark, and ſhe cannot be poſitive where Miſs
Pirie was, but thinks ſhe was ſtanding by the bed-ſide, and ſhe was H
talking of her brother-in-law alſo as well as Miſs Stirling. De-
pones, That ſhe does not recollect whether this was before or after
the two other occaſions. Depones, That upon this occaſion ſhe
was awaked by Miſs Pirie ſpeaking. Depones, That upon this oc-
caſion the witneſs did not ſay any thing to Miſs Pirie, but told her I
a day or two after, that ſhe had heard her ſpeaking about her bro-
ther-in-law,

A ther-in-law, and about ſome colliers and dogs, and that her brother-in-law had nearly been killed about that time, or a little before; and that the witneſs told her, that when ſhe awaked, ſhe thought ſhe was repeating her Engliſh Hiſtory. Depones, That ſhe remembers upon another occaſion Miſs Pirie coming to Miſs
B Woods, and ſitting down upon the bed-ſide, juſt after Miſs Woods had gone to bed: That Miſs Woods was then ill, and Miſs Pirie rubbed her back for a little, and that they had not much converſation; and ſhe does not remember Miſs Pirie coming to Miſs Woods' bed on any other occaſion than thoſe above mentioned.
C Depones, That upon the firſt occaſion, when ſhe ſays ſhe believes Miſs Pirie's clothes were off, ſhe had no other reaſon for believing ſo, than from her ſuppoſing it to be in the dead of night. Depones, That it was a tent-bed which ſhe and Miſs Woods ſlept in, and ſhe thinks it was a new bedſtead. Depones, That it was apt to creak
D a little when people moved in it, but ſo very little, as not to be any thing remarkable. Depones, That ſhe is not quite poſitive, that Miſs Pirie's legs were in bed upon the firſt occaſion, but ſhe thinks ſo, and ſhe felt the legs of one of them. Depones, That upon the ſecond occaſion ſhe is quite poſitive Miſs Pirie's legs were
E in the bed, at leaſt ſhe was lying in ſuch a manner as to perſuade the witneſs that was the fact, as ſhe was below the bed-clothes; and that upon the firſt occaſion alſo, ſhe thinks her body was below the bed-clothes. And being interrogated, and deſired to explain a former part of her depoſition, wherein ſhe ſays that Miſs
F Woods turned to Miſs Pirie, depones, That Miſs Pirie had been lying above Miſs Woods, but at that particular time they were not ſo, but Miſs Woods was lying next to the witneſs, and Miſs Pirie in the outſide. Depones, That when Miſs Pirie was above Miſs Woods, Miſs Pirie's legs were in the bed. Depones, That upon
G the ſecond occaſion, when ſhe firſt perceived Miſs Pirie was in bed with Miſs Woods, her own face was to the wall, and her back to them, but ſhe turned two or three times: That the firſt time ſhe turned there was not much light, but there was enough to enable her to perceive that Miſs Pirie was lying above Miſs Woods. De-
H pones. That ſhe had turned ſeveral times before Miſs Woods ſaid ſhe ſuſpected the witneſs was awake; and that ſhe cannot ſay whether ſhe had obſerved the previous turnings which ſhe made or not. All which is truth, &c.

I The Judges adjourned till to-morow, at the ſame place, and at ten o'clock in the morning.

Edinburgh,

Edinburgh, 16th March 1811.

In preſence of the following Judges; the Right Honourable Lord JUSTICE-CLERK, Lord MEADOWBANK, Lord ROBERTSON, Lord NEWTON, and Lord BOYLE, and of the Counſel and Agents for the parties,

Compeared Miſs JANET MUNRO, a witneſs formerly ſworn and examined *in causa*; who being farther interrogated for the purſuers, depones, That ſhe thinks it was next morning after the firſt occaſion when Miſs Pirie came to Miſs Woods bed, and when Miſs Cumming and ſhe were dreſſing together in the dreſſing-room, that the witneſs mentioned the circumſtance to her. Depones, That ſhe told Miſs Cumming that ſhe had been diſturbed in the night, by Miſs Pirie being in bed with Miſs Woods, and that ſhe had ſpoke to them, but did not tell her the manner of her being diſturbed. Depones, That ſhe thinks ſhe did mention that Miſs Pirie had been a good while in bed, but does not remember whether ſhe mentioned that there had been a good deal of whiſpering between them. Depones, That ſhe does not recollect whether upon that occaſion Miſs Cumming told the witneſs that ſomething of the ſame kind had happened to her; but ſhe did tell her ſo upon this or ſome other occaſion. Depones, That ſhe rather thinks, but is not quite ſure, that Miſs Stirling was in the room on this occaſion, and heard what ſhe told Miſs Cumming, but ſhe did not tell Miſs Stirling particularly by herſelf on any other occaſion. Depones, That ſhe does not recollect that Miſs Stirling made any obſervation upon the occaſion. Depones, That ſhe told what had happened upon that firſt occaſion, of Miſs Pirie coming to Miſs Woods' bed, to Mary Brown when ſhe came to town, about the beginning of October, and that ſhe did not tell any more circumſtances than what ſhe had above deponed to. Depones, That ſhe has a ſiſter a year or two older than herſelf, who came to town at the ſame time with Mary Brown; but the witneſs did not mention any thing of the circumſtance to her, either then or before ſhe left the ſchool. Depones, That neither did ſhe mention to her ſiſter any thing about Miſs Pirie having come a ſecond time to the bed. Depones, That ſhe ſaw her ſiſter pretty often at that time. Being interrogated, Why ſhe did not tell theſe things to her ſiſter? depones, That ſhe did not like to do ſo. Depones, That ſhe did not mention the circumſtances to Miſs Stevenſon till after ſhe had left ſchool. Depones, That ſhe did not tell either her ſiſter or Miſs Stevenſon

 that

A that ſhe felt it diſagreeable to remain at the ſchool. Depones, That after theſe circumſtances ſhe did not in any degree alter her behaviour towards either Miſs Pirie or Miſs Woods. Depones, That when Charlotte the maid mentioned, as above deponed to, that ſhe had ſeen the purſuers through the key-hole, ſhe deſcribed
B the ſituation in which they were lying, ſo as to lead the witneſs to conſider it an improper ſituation; which was her reaſon for having ſo worded it in a former part of her depoſition. Depones, That when ſhe mentioned the circumſtances to Mary Brown, ſhe alſo told her generally that Charlotte the maid alſo knew of the pur-
C ſuers' improper behaviour, but ſhe did not mention to Mary Brown the particulars which Charlotte had communicated to her. Depones, That when Charlotte told the witneſs of her having ſo peeped through the key-hole, the witneſs believed her. Depones, That the witneſs does not recollect whether there are any key-holes
D to thoſe doors or not, and that ſhe did not think of looking at the doors to ſee whether the ſtory of the key-hole could be true or not. Depones, That ſhe told Mary Brown to mention the circumſtances to Miſs Stevenſon. Depones, That her reaſon for deſiring Mary Brown to tell it to Miſs Stevenſon, was becauſe ſhe was her parti-
E cular friend, and ſhe had no other perſon to tell it to. Depones, That ſhe does not think Mary Brown did tell Miſs Stevenſon, and that Miſs Stevenſon never ſpoke of it to the witneſs before ſhe left the ſchool. On the depoſition being read over to her, depones, on farther recollection, That it was to her aunt Miſs Iſabella Murdoch
F that ſhe deſired Mary Brown to mention the circumſtances, and not to Miſs Stevenſon, who ſhe rather thinks was not at that time in Edinburgh. Depones, That although, as above deponed to, ſhe was ſatisfied with the ſchool in every other reſpect, yet after theſe circumſtances happened, ſhe wiſhed to leave it. Depones, That
G when Charlotte mentioned to her, as above deponed to, that ſhe had ſeen the purſuers together in the dreſſing-room, ſhe did not deſcribe particulars farther than already deponed to, but juſt ſaid ſhe had ſeen them as before in the drawing-room. Depones, That although Miſs Stirling was preſent as above deponed to, ſhe
H does not recollect that ſhe made any obſervation. Depones, That ſhe had not afterwards any particular converſation with Miſs Stirling upon the ſubject; but one day when they were out walking, Miſs Cumming, Miſs Stirling and ſhe being together, Miſs Cumming began to talk on the ſubject, and Miſs Stirling joined in the
I converſation, but the witneſs does not remember what ſhe ſaid. Depones, That Miſs Stirling ſeemed to be ſhocked at what the maid

told

told them, and ſeemed to think it very wicked. Depones, That Miſs Stirling, on hearing the maid's ſtory as above deponed to, ſaid ſhe would take particular notice of the purſuers at breakfaſt, and the witneſs of courſe ſuppoſes ſhe did ſo, but ſhe never made any remarks to her on the ſubject. Depones, That upon the firſt occaſion of Miſs Pirie coming into Miſs Woods' bed, when the witneſs wakened, the firſt thing ſhe heard was whiſpering, and ſhe does not remember how ſhe herſelf was lying when ſhe waked, except that ſhe was lying on the inner ſide of the bed, next the wall, and particularly ſhe does not remember whether ſhe was lying with her face to Miſs Woods or not. Depones, That ſhe does not recollect whether ſhe turned herſelf, or lay ſtill without ſtirring during the half hour or thereabouts before ſhe ſpoke. Depones, That ſhe lay ſo long without ſpeaking, becauſe ſhe was afraid to ſpeak, leſt they ſhould be angry with her. Depones, That ſhe does not know whether any of the other young ladies in the room were awake or not: That the other young ladies in the room were Miſs Cunynghame, Miſs Hunter, and the two Miſs Edgars. Depones, That upon that firſt occaſion of Miſs Pirie coming into Miſs Woods' bed, ſhe ſaid to the witneſs before ſhe went away, that ſhe was not in the bed, but was only ſtanding beſide it. Being ſpecially interrogated, Whether Miſs Pirie ſhook hands with her, and wiſhed her goodnight before ſhe went away? depones, That ſhe does not recollect that ſhe did, nor does ſhe recollect whether or not ſhe ſaid that ſhe was ſorry for having diſturbed her. Being ſpecially interrogated, Whether ſhe ſaid any thing that night to Miſs Woods after Miſs Pirie was gone? depones, That ſhe does not recollect ſaying any thing to her. Depones, That ſhe does not recollect that ſhe had any converſation next morning with Miſs Cunynghame about what had happened, nor at any time afterwards. Depones, That ſhe is not poſitive, but cannot recollect having had any converſation with Miſs Cunynghame about what happened on the ſecond occaſion. Depones, That upon the ſecond occaſion, ſhe is not ſure whether the ſhutters of the bed-room window were open or ſhut, but they were uſually ſhut; but ſhe thinks the bed-curtains were ſhut. Depones, That upon the ſecond occaſion the whiſpering did not ſtop immediately on the witneſs's coughing, but did ſoon after. Depones, That when ſhe went to the dreſſing room for water as above deponed to, ſhe went out by the foot of the bed, and round the foot of the Miſs Edgars' bed, after going to the ſide of her own to get her wrapper. Depones, Then when ſhe ſo went out ſhe did not ſee Miſs Pirie ſtanding between her and the

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cannot recollect whether ſhe ſaid any thing to her G

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A the window, and there was light enough in the room to have ſeen her if ſhe had been there, but when ſhe went to the bed-ſide to get her wrapper, ſhe ſaw Miſs Pirie in the bed, and purpoſely gave her a knock with her elbow, as ſhe ſtooped down for her wrapper, in order to let Miſs Pirie underſtand that ſhe perceived ſhe was there.

B Depones, That ſhe does not know whether any of the young ladies were awake when ſhe went for the water, but when ſhe returned with it, the eldeſt Miſs Edgar laughed. Depones, That on that ſame morning, after Miſs Woods went out of the room, ſhe had ſome converſation with Miſs Edgar about what had happened:

C That the witneſs only aſked her whether ſhe had ſeen Miſs Pirie go out of the room, and ſhe is quite ſure that ſhe ſaid nothing more to her, or tell her what ſhe had obſerved; and Miſs Edgar anſwered, that ſhe had ſeen Miſs Pirie go out of the room: That Miſs Edgar did not tell her what ſhe had laughed at. Depones,

D That it was the general opinion in the ſchool, that the purſuers careſſed and fondled each other more than was conſiſtent with ordinary female friendſhip. Depones, That Miſs Cumming and Miſs Stirling had ſo expreſſed themſelves to the witneſs, and ſhe rather thinks the Miſs Dunbars, but is not quite ſure, and ſhe does not

E recollect any others that did ſo. Depones, That the quarrels before deponed to, occurred two or three times, and upon one occaſion, when they quarrelled in the dreſſing-room, the altercation was ſo loud as to waken all the ſcholars in Miſs Woods' room with the noiſe, and Charlotte the maid told the witneſs next morning, (and

F ſhe thinks the reſt heard it), that ſhe alſo had heard them quarrelling, and had gone up to ſee what was the matter, when ſhe found Miſs Woods crying and Miſs Pirie ſtanding beſide her, bidding her not cry. Depones, That ſhe is not certain when this quarrel took place, but rather thinks it was after the ſecond time of Miſs Pirie's coming into Miſs Woods' bed. Depones, That they might have wiſhed to conceal their quarrels from the ſcholars, but ſhe does not think they took any pains to do ſo, nor did they leave the room after a quarrel began: That the coolneſs ariſing from theſe quarrels ſometimes laſted a week or ten days before a recon-

H ciliation took place. Depones, That ſhe has ſeen them reconciled to each other after ſuch coolneſs, and it was on thoſe reconciliations that they particularly careſſed each other. Depones, That on any of the occaſions when Miſs Pirie came to Miſs Woods' bed, the witneſs did not obſerve that it was for the purpoſe of a reconciliation. Depones, That ſhe does not remember, and does not think that there was any ſubſiſting coolneſs between them previous to either

either of the times when Miſs Pirie came into Miſs Woods' bed. Being interrogated, Whether ſhe thinks there might have been any private quarrel between them, without her knowing it? depones, Perhaps there might, but ſhe does not think there was. Depones, That when Miſs Cumming, upon returning from their walk, told Miſs Pirie as above deponed to, that ſhe was exceſſively tired with being diſturbed in the night, there was no other preſent beſides the witneſs and Miſs Cumming: That the other ſcholars were taking off their things in the dreſſing-room, and the witneſs and Miſs Cumming coming down before the reſt, found Miſs Pirie alone in the ſchool-room, and ſome of the ſcholars came in juſt as Miſs Pirie was leaving the room. Depones, That ſhe does not recollect whether it was Miſs Pirie or Miſs Woods that walked out with them that day: That Miſs Pirie went out at the door leading into the paſſage, and that the witneſs and Miſs Cumming remained in the ſchool-room; and ſhe does not remember whether Miſs Pirie came ſoon back or not, nor whether ſhe was out of countenance when ſhe did come back. Depones, That ſhe thinks they told Miſs Stirling ſome time that afternoon what Miſs Cumming had ſaid to Miſs Pirie; but the witneſs did not tell this to Charlotte the maid, at leaſt ſhe does not think ſhe did. Depones, That this happened about a month or three weeks before ſhe left the ſchool. Depones, That Charlotte the maid never made any remarks to her as to any improprieties in the purſuers' conduct, until the witneſs mentioned to her that ſhe had been diſturbed on the ſecond occaſion on the morning thereafter. Depones, That about the middle of the time that the witneſs was at ſchool, Miſs Cumming expreſſed to her, and to ſome of the other ſcholars, a deſire to be allowed to ſleep with the deponent: That the deponent ſaid ſhe thought it was nonſenſe, and declined it: That ſhe does not recollect whether this was after both the occaſions of Miſs Pirie coming into Miſs Woods' bed. Depones, That after thoſe two occaſions, ſhe herſelf did not make any ſuch propoſal to Miſs Cumming, nor did Miſs Cumming ever renew the propoſal to her. Depones, That ſhe thinks it was fully a month before the ſchool broke up, that the two beds were put up in the dreſſing-room. Depones, That Miſs Anſtruther, who ſlept in one of thoſe beds, occaſionally went home to ſleep, and on thoſe occaſions Miſs Woods came to ſleep with the deponent as formerly. Depones, That when the witneſs received the ſacrament in November laſt, it was according to the form of the Church of Scotland; and ſhe received it in the ſame form in November 1808. Depones, That ſhe had no converſation with any

A B C D E F G H I

A clergyman before taking the ſacrament the laſt time. Depones, That Miſs Pirie adviſed her to have ſuch converſation, in order to prepare her for receiving the ſacrament, but ſhe does not recollect that ſhe blamed her for not having done ſo. Depones, That ſhe has had ſeveral converſations with Miſs Pirie reſpecting religion.
B Depones, That Miſs Pirie gave her ſeveral inſtructions with regard to reading the Bible, and offered to go over with her what ſhe did read and explain it to her. Depones, That ſhe complained to Miſs Pirie, that her time was ſo much taken up with the leſſons ſhe had to get, that ſhe had not time to read the Bible as ſhe wiſhed to
C do. Depones, That Miſs Pirie mentioned to her ſeveral books on religious ſubjects for her to read, which were recommended by Mrs Hamilton. And being interrrogated, Whether Miſs Pirie complained to her that ſhe thought ſhe had made little proficiency in religious knowledge? depones, That ſhe did not. Depones,
D That ſhe had not any converſation with a clergyman before firſt taking the ſacrament. Depones, That before ſhe took the ſacrament the ſecond time, Miſs Pirie told her that Mr Dickſon the miniſter would converſe with her, but Miſs Stevenſon told her ſhe thought it unneceſſary, and therefore ſhe did not do ſo;
E And there being ſhewn to the witneſs two books, one of them being the ſecond volume of Miſs Pirie's own Bible, and the other a book on the Sacrament, (which laſt is marked by the deponent and the Lord Juſtice-Clerk, as relative hereto), depones, That ſhe has ſeen both the ſaid books, and that Miſs Pirie
F recommended to her ſerious peruſal ſeveral paſſages in the Bible. And being deſired to look at certain places marked in ſaid book upon the Sacrament, depones, That theſe are places marked by Miſs Pirie, in order that the deponent might pay particular attention to the paſſages therein, and it was recently before the
G laſt ſacrament that Miſs Pirie put the ſaid book into her hands, and ſhe was then on the ſame terms of friendſhip with her as before. Depones, That after taking the ſacrament on the laſt occaſion, ſhe does not remember coming round the table to Miſs Pirie, and ſhaking her by the hand, and aſking her how ſhe did.
H Depones, That on the day when ſhe finally left the ſchool, ſhe remembers coming into the ſmall room next to the ſchool-room, where Miſs Pirie was ſitting with the dancing miſtreſs: That ſhe went into the room on purpoſe to aſk Miſs Pirie to excuſe Miſs Edgar ſome lines that ſhe was to ſay, and that ſhe does not remember
I ſaying that her papa was come for her, and ſhe is certain ſhe did not ſay ſhe wondered what he wanted with her. Depones, That

ſhe

ſhe ſuppoſes Miſs Pirie knew her father was come for her, and that A
ſhe had her bonnet on, and ſhook hands with Miſs Pirie as uſual.
Depones, That ſhe did not tell Miſs Pirie that ſhe was going away
not to return, nor did ſhe know that herſelf at the time, nor does
ſhe ſuppoſe Miſs Pirie knew it. And being ſpecially interroga-
ted, If, ſubſequently to the above occaſions of Miſs Pirie having B
come to Miſs Woods' bed, ſhe ever did, when happening to be
near Miſs Pirie, put her arm round her waiſt, as expreſſive of
kindneſs or affection for her? depones, That ſhe never did, or
at leaſt has no recollection of having done ſo. Depones, That
during the working hours ſhe ſometimes ſat next to Miſs Pirie, C
but not generally. Depones, That while they were out walking,
ſhe ſometimes uſed to aſk to lean upon Miſs Pirie's arm, and ſo
did ſeveral of the other girls, becauſe they learned their geography
with Miſs Pirie, and uſed often to get part of their leſſon while
walking with her in that way. Being ſpecially interrogated, D
Whether, when ſhe found that Miſs Pirie had given her arms to
other young ladies for the walk of that day, ſhe has ſaid, and often
ſaid to her, 'Well, remember I beſpeak an arm for to-morrow?'
depones, Perhaps ſhe may, but ſhe has no recollection of it. De-
pones, That the witneſs does not think ſhe complained more than E
the other ſcholars of the difficulty of getting the double taſks
impoſed by way of puniſhment. And being interrogated, Whe-
ther ſhe remembers the diſgrace-table, and that Miſs Pirie made
many remarks to her on the ſubject, and that ſhe replied, that ſhe
dared ſay it was all for her own good? depones, That ſhe does F
remember ſaying ſo, but does not recollect when, nor does ſhe re-
member Miſs Pirie making many remarks on the ſubject. Being
interrogated, Whether ſhe ever remembers ſaying to Miſs Pirie,
that ſhe dared ſay ſhe would bleſs the day ſhe came to Drum-
ſheugh? depones, That ſhe remembers ſo ſaying one day when G
they were out upon their walk, but does not remember upon what
occaſion, or whether it was before or after Miſs Pirie coming to
Miſs Woods' bed. Depones, That upon this occaſion ſhe had
hold of Miſs Pirie's arm, but ſhe does not remember who had hold
of the other, and in particular, ſhe does not remember whether it H
was Miſs Cunyngham or not. Depones, That ſhe does not re-
collect whether ſhe was walking at the head of the Links that day
when ſhe made uſe of that expreſſion, nor whether it was on the
ſame day that they met a crazy man, who frightened ſome of the
young ladies. Depones, That ſhe remembers having been ſome I
days in diſgrace, as it was called, at the ſchool, but does not re-
member if it was immediately preceding the day on which ſhe

made

made uſe of the above expreſſion. Depones, That ſhe does not recollect, that during the laſt three weeks ſhe had been at the diſgrace table more frequently than before, and particularly that ſhe does not recollect that ſhe had been there ſeveral times during the laſt three weeks. Depones, That ſhe does not recollect her having mentioned to Miſs Pirie that ſhe had once had a very bad governeſs. Depones, That in general ſhe ſpoke to Miſs Pirie and Miſs Woods in the ſame confidential manner ſhe would have done to any other miſtreſs for whom ſhe had a reſpect. Depones, That upon occaſion of Miſs Cumming propoſing to ſleep with the deponent, ſhe remembers ſaying to Miſs Pirie, that ſhe did uot know what to ſay to Miſs Cumming herſelf, but that ſhe did not want to ſleep with her; but ſhe does not recollect whether ſhe ſaid to Miſs Pirie that ſhe was happy ſhe had prevented it. Depones, She remembers on one occaſion, when out on their walk, Miſs Cumming and ſhe got ſome apples between them, and each brought one of them to Miſs Woods, but does not remember how long this was before ſhe left ſchool, and that ſhe does not recollect that ſhe picked one on purpoſe for Miſs Woods. Depones, That ſhe alſo held them out for Miſs Pirie and the reſt to take one. Depones, That ſhe does not remember of deſiring, at the geography leſſons, to have a ſeat next Miſs Pirie, nor that any other of the big girls expreſſed ſuch wiſh; but ſhe uſed to wiſh to get near the fire where Miſs Pirie ſat, but not in order to get near Miſs Pirie. Depones, That when walking in the ſchool-room, or in the little garden in front of the houſe, and repeating her leſſons to Miſs Pirie, it was not the witneſs's manner to take her by the arm in general, though ſhe may have done it on ſome occaſions. Depones, That ſhe remembers Miſs Woods' birth-day, and that Miſs Pirie came to her that morning before ſhe was up, and made her a preſent of a Bible. Being interrogated by the Lord Juſtice Clerk, and it being explained, that when ſhe told Charlotte, the maid, after the ſecond occaſion, that ſhe was very tired, having been diſturbed and got little ſleep in the night, that as day was breaking in the morning before ſhe was ſo diſturbed, ſhe muſt have had at leaſt ſeven hours ſleep, and therefore, could not be very tired for want of ſleep, unleſs ſhe had been reſtleſs before. And being deſired to explain how ſhe came to ſay ſo to the maid, depones, That Miſs Cumming having previouſly told her, that the maid knew of the purſuers' behaviour, the witneſs merely uſed theſe expreſſions to introduce the converſation. And being further interrogated by Lord Meadowbank,

dowbank, how long it was before this converſation, that Miſs Cumming told her, that the maid knew of their behaviour? depones, That ſhe does not recollect exactly how long, but it was two or three days before. Being interrogated, What it was that Miſs Cumming told her the maid knew? depones, That it was juſt generally that the maid noticed theſe things as well as they did, and that Miſs Cumming did not tell her when or on what account it was that ſhe had this previous converſation with Charlotte. Being interrogated, as it was quite dark the firſt time Miſs Pirie came into Miſs Woods' bed, how ſhe came to know that it was Miſs Pirie lay above Miſs Woods, more than Miſs Woods above Miſs Pirie? depones, That ſhe did not know which of them was uppermoſt the firſt time. And being interrogated, How in the dark ſhe came to know that one of them was lying above the other, more than by the ſide of the other? depones, That her reaſon was, that ſhe could not get the clothes kept upon her. And being aſked, Whether ſhe wiſhed it to be underſtood, that ſhe had not formed her opinion of the one being above the other, from having in any degree actually felt them in that ſituation? depones, No, on the contrary, ſhe partly formed her opinion, from having felt them, as they were lying cloſe to her; and ſhe thought at the time, and thinks ſtill, that ſhe felt both their bodies at the ſame time. Interrogated, What was the firſt thing ſhe perceived when ſhe awoke, whether the purſuers ſo lying above each other, or whether it was their whiſpers which ſhe heard? depones, It was the whiſpers which ſhe heard firſt, but they were then lying above one another. Depones, That the whiſpers were not ſuch as to enable her to diſtinguiſh the one voice from the other. Being interrogated, as ſhe could not diſtinguiſh the voice of Miſs Pirie from the voice of Miſs Woods, how ſhe came to diſtinguiſh that it was the voice of Miſs Pirie at all? depones, Becauſe ſhe could not think it could be anybody elſe, and of courſe, ſhe could not have been certain it was Miſs Pirie, if ſhe had not ſpoken to her afterwards, before ſhe quitted the room. And being interrogated, Whether there was any other, and what converſation there was that paſſed, which could lead Miſs Pirie to ſay, 'I am not in the bed, I am only ſtanding beſide 'it?' depones, That there was no other converſation, and ſhe ſuppoſes Miſs Pirie ſaid ſo in order to make the witneſs believe ſhe was not in bed. And being interrogated, Whether, at the time of the firſt occaſion, ſhe had formed any opinion that there was any thing wicked or improper going on betwixt the purſuers? depones,

A B C D E F G H I

A depones, That she did not, and it was only from what her nursery-maid Mary Brown said, that she first suspected there was something wicked or improper. Being interrogated, Whether, after the occasion prior to the two times, when she is certain the pursuers were in bed together, being that on which she has deponed,
B she wakened in a fright, thinking there was somebody in the bed, she mentioned that circumstance to Miss Cumming, or to Charlotte the maid, or had any conversation with them about it? depones, That she did mention that circumstance to Miss Cumming, and it was upon that occasion Miss Cumming told her she had been accustomed to be so disturbed, and that she at the same time added, that Charlotte the maid had told her, Miss Cumming, that she had noticed the behaviour of the pursuers. And being interrogated, Whether, upon any of the two occasions, when Miss Pirie and Miss Woods were in bed together, she either heard or saw
D any kissing or caressing between them? depones, That she did not. And being interrogated, Whether, when Charlotte mentioned the two occasions, the one in the drawing-room, and the other in the dressing-room, when she had seen them lying together, whether she mentioned which of the pursuers was lying uppermost? de-
E pones, She did not. Being interrogated, If she knew or understood at what Miss Edgar laughed, as above deponed to? depones, That she certainly does not know, but she supposed she laughed at seeing Miss Pirie go out of the room. Interrogated, depones, That Miss Edgar's bed might be about a foot distant from the bottom of the
F witness's bed, and the other bed, which was parallel to her own, was just or nearly the distance of the breadth of the window, which she thinks is more than two feet. Interrogated by Lord Boyle, depones, That upon the first occasion when she felt the pursuers' bodies one above the other, she thinks they had nothing on but their shifts. And being interrogated, Whether it was their naked bodies, or only their shifts, which touched her? depones, She thinks both.

Interrogated for the defender, depones, That she is sensible she is sometimes a little deaf of one ear; and the witness adds, that
H the reason of her turning to hear what the pursuers were saying, was, that she was then lying with her back to them, and with her best ear upon the pillow. All which is truth, &c. *Causa scientiæ patet.*

The Judges adjourned till Tuesday next, at eleven o'clock fore-
I noon.

Edinburgh,

Edinburgh, 19th March 1811.

In preſence of the following Judges, the Right Honourable LORD JUSTICE CLERK, Lord MEADOWBANK, Lord ROBERTSON, and Lord NEWTON, and of the Counſel and Agents for the parties.

The counſel for the Purſuers here ſtated, That *they* were ready to undergo a judicial examination, if called for, either by the defender or the Judges. To which it was anſwered by the counſel for the defender, That the propoſition being new, and as far as they knew unprecedented, they were not prepared to ſay any thing farther than that they do not demand the examination offered.

Thereafter compeared MARY BROWN, a ſervant in the family of George Munro, Eſq. reſiding in Elder Street, unmarried, aged thirty years and upwards; who being ſolemnly ſworn, and purged of malice and partial counſel, depones, That the family of Mr Munro came to town on the 1ſt of October laſt, and the witneſs came on Wedneſday thereafter with the children: That Miſs Janet Munro was at that time at the ſchool of the purſuers, and that ſhe came to viſit her father on the Saturday immediately following, and ſtaid all night. Depones, That while the witneſs was attending the children, Miſs Janet called her twice into her room, and ſeemed anxious to get her alone: That this was about eleven o'clock at night, and while ſhe was putting the other children to bed. Depones, That when the witneſs went into her the ſecond time, ſhe aſked her how ſhe liked the ſchool? and Miſs Janet anſwered, 'That ſhe liked it very well, but there was 'one thing very diſagreeable to her.' Depones, That the witneſs inſiſted upon knowing what it was; and Miſs Janet, after heſitating about a minute, and being like to cry, ſaid 'that Miſs Pirie 'came to Miſs Woods' bed in the night. Depones, That Miſs Janet ſaid ſhe was awakened with a noiſe, and was diſturbed with the bed ſhaking, and could not get the bed-clothes kept on; and ſhe had ſpoken to Miſs Pirie, and deſired her to go away, for that ſhe could not get ſlept: That Miſs Pirie ſaid, that ſhe was ſtanding at the bed-ſide; and then Miſs Woods told her ſhe had better go away; and ſhe thinks theſe were the very words that Miſs Munro uſed. Depones, That Miſs Munro added, that Miſs Pirie was lying above Miſs Woods. Being interrogated, Whether

ſhe

A ſhe told her that they lay ſtill, or that there was any motion between them? depones, That ſhe cannot remember that. Depones, That upon her aſking her a ſecond time about the ſhaking of the bed, ſhe told her that ſhe had again felt it ſhaking, and could not get the bed-clothes kept on, and that ſhe was in a horrible
B fright, and that this was at ſome interval after the firſt ſhaking; and ſhe told her that they were a long time in bed. Being interrogated, What ſhe ſaid to Miſs Munro, or what advice ſhe gave her? depones, That the witneſs ſaid it was a dreadful thing, and they were worſe than beaſts, and deſerved to be burnt if it was
C true; and Miſs Munro anſwered, 'O yes Mary, it is perfectly 'true'; and the witneſs told her if ever ſhe obſerved the ſame thing happen again, to be ſure to let her know. Being interrogated, When the witneſs ſaw Miſs Munro again? depones, That ſhe ſaw her again on the following Saturday, when ſhe came home
D and ſtaid all night. Being interrogated, If ſhe had any converſation with her on this occaſion? depones, Yes: That Miſs Munro came into the nurſery in the afternoon to inquire after the children, when the witneſs aſked her if any thing improper was going on at the ſchool; that Miſs Munro anſwered, 'Yes, it was
E 'as bad as ever, and Miſs Pirie had again come to Miſs Woods' 'bed in the ſame manner they had been before.' Depones, That ſhe ſaid ſhe had lain long awake, and had coughed and turned herſelf to make them underſtand ſhe was awake: That ſhe ſaw Miſs Pirie in the bed: That Miſs Woods deſired her to get up, and get a
F glaſs of water, and that ſhe did ſo, but when ſhe came back with it Miſs Pirie had ſlipt out of the room. Depones, That ſhe told her that when ſhe returned into bed again, Miſs Woods ſaid, 'You 'ſeem to have got a bad cough; you had better go to a drawer and 'get ſome ſugar:' That ſhe does not remember whether ſhe ſaid
G ſhe had or not, but that ſhe fell aſleep again. Being interrogated, Whether the witneſs ſaid any thing more to Miſs Munro at this time? depones, Yes: It is a very wicked thing, and Miſs Pirie certainly is a man. Interrogated, Whether the witneſs aſked her if any other perſon had ſeen the ſame things? depones, She did.
H Being interrogated, Who ſhe ſaid had ſeen them? depones, That Miſs Munro told her that ſhe had complained to Miſs Cumming of being thus diſturbed, and that Miſs Cumming told her the ſame thing had often happened to her, as Miſs Woods frequently came to Miſs Pirie's bed where ſhe ſlept. Depones, That upon this the
I witneſs ſaid to Miſs Munro that ſhe ſhould not ſleep with Miſs Woods, but get another bed for herſelf; and Miſs Munro ſaid ſhe would

would do ſo ſoon, as there were ſome other young ladies coming A
to the ſchool. Being interrogated, Whether Miſs Munro men-
tioned any body elſe as well as Miſs Cumming as having ſeen theſe
things? depones, That ſhe mentioned that ſhe had told the maid
Charlotte ſhe had been much diſturbed in the night, and was very
tired by Miſs Pirie coming into Miſs Woods' bed; and that Char- B
lotte anſwered, that ſhe had obſerved ſuch things before as ſhe
had once gone to one of the rooms and found it faſtened, and
had looked through the key-hole, and had ſeen them on the
ſofa. Being interrogated, How long the witneſs has been in
Mr Munro's family? depones, Seven years. Being interrogated, C
What ſort of girl ſhe conſidered Miſs Munro as to veracity, or tell-
ing truth or lies; to which queſtion the counſel for the purſuers
objected, and the Judges ſuſtained the objection. And being inter-
rogated for the purſuers, Did any more converſation take place be-
tween you and Miſs Munro upon the ſecond Saturday; and the D
witneſs being deſired to take time for recollection? depones, That
ſhe does not remember any other converſation, except that the wit-
neſs ſaid to Miſs Munro, ſhe ought to let it be known to the other
ladies at the ſchool, that it might be found out and ſtopped. In-
terrogated, What Miſs Munro ſaid to that? depones, That ſhe does E
not exactly remember what ſhe ſaid, but it was ſomething about
the other young ladies being all little. Interrogated, Whether
any thing further paſſed relative to making it known? depones,
Nothing that ſhe recollects. Specially interrogated, Whether Miſs
Munro deſired the witneſs to tell her father or elder ſiſter? de- F
pones, She did not. Specially interrogated, Did Miſs Munro de
ſire you to tell Miſs Stevenſon or Miſs Iſabella Murdoch? depones,
She did not on that occaſion; but on the firſt Saturday, the wit-
neſs told Miſs Munro that ſhe would tell Miſs Iſabella Murdoch:
That Miſs Munro at firſt forbade her, but afterwards ſaid ſhe G
might tell her; and the witneſs told Miſs Iſabella Murdoch ac-
cordingly. Interrogated, When ſhe told Miſs Iſabella Murdoch?
depones, That ſame night, when ſhe came into the nurſery to ſee
the children, the witneſs began to tell her, but ſhe would not liſten
to it, and went out of the nurſery. Interrogated, What ſhe did H
tell Miſs Murdoch? depones, That ſhe was juſt beginning to tell
her about it, when Miſs Murdoch ſaid ſomething ſhe does not re-
member, but did not appear to liſten, and left the room, and that
ſhe went to Glaſgow in a day or two after, and the witneſs never
told her any thing more of it. Interrogated, Whether ſhe told it I
to any other perſon? depones, To no other. Interrogated, What
was her reaſon for concealing it? depones, That it was ſo ſtrange

A and dreadful a ſtory, and the other ſervants were all new to her, and ſhe had no one to tell it to. Interrogated, Did Miſs Murdoch come back from Glaſgow before the ſchool broke up? depones, That ſhe did not before the ſchool broke up, and ſtill remains there. Interrogated, Did Miſs Munro's father live in the houſe at
B that time, and how long did he continue to live in it? depones, That he came to town with them, and remained till Martinmas, and has continued principally to remain here ſince. Interrogated, What was your reaſon for concealing it from Mr Munro? depones, That ſhe did not like to tell it to him, and that ſhe had no other
C female in the houſe to tell it to. Interrogated, Did Miſs Stevenſon live in Edinburgh at this time? depones, That ſhe did not, being then in Ayrſhire, and did not come to town till about three weeks after that time. Being interrogated, How old is Miſs Munro's eldeſt ſiſter? depones, She is about eighteen, and was living in
D the houſe at that time, and till Martinmas, but the witneſs did not tell it to her. Interrogated, If ſhe had frequent acceſs to ſee Miſs Stevenſon after ſhe came to town before Martinmas? depones, That ſhe frequently ſaw her. Interrogated, What was your reaſon for concealing it from Miſs Stevenſon and the elder ſiſter Miſs
E Munro? depones, She could not tell it to none of them; it was ſuch a horrible thing that ſhe could not ſpeak of it. Interrogated, What did ſhe think would become of Miſs Janet Munro from ſuch horrible proceedings in the mean time, and before they were diſcovered? depones, That ſhe always hoped Miſs Munro would make
F it public among the ſcholars, and that it would be diſcovered by ſome other means, and that the witneſs could tell it to nobody. Interrogated, Was it the real opinion of the witneſs that Miſs Pirie was a man? depones, That ſhe does not recollect whether it was; but being very angry about it, and conſidering it as ſo odd a
G proceeding, ſhe juſt ſaid ſurely ſhe muſt be a man. Interrogated, When Miſs Munro told her the firſt Saturday of Miſs Pirie's coming to Miſs Woods' bed, did ſhe complain of it merely as a diſturbance of her ſleep, or did ſhe mention it as a piece of wickedneſs in Miſs Pirie and Miſs Woods? depones, That ſhe only com-
H plained ſhe was greatly diſturbed, and it was what the witneſs ſaid that made her take it up as more wicked than ſhe underſtood it to be. Interrogated, Did you explain to Miſs Munro, that it was wicked, and why you thought it wicked? depones, That ſhe does not remember that ſhe did explain any thing about it to Miſs Mun-
I ro, but merely ſaid it was ſurely a very wicked thing. Interrogated, and deſired to explain to their Lordſhips, what the circumſtances

ſtances were from which ſhe formed an opinion, that Miſs Pirie and Miſs Woods had been guilty of wickedneſs together? depones, By the deſcription Miſs Munro gave her of the way they were lying, ſhe was made to think it was very wicked. Interrogated, What were the particulars of the deſcription, from which the witneſs thought it wicked? depones, That Miſs Pirie being above Miſs Woods, and the ſhaking of the bed in the way they were lying, made the witneſs think it very bad. Interrogated, In what manner did Miſs Munro explain to her, that Miſs Pirie and Miſs Woods were lying? depones, That Miſs Munro juſt told her Miſs Pirie was lying above Miſs Woods in the bed, and that was all. Interrogated, When Miſs Munro told the witneſs the ſtory on the firſt Saturday, did ſhe aſk her any queſtions, in order to find out more diſtinctly what the fact was? depones, That ſhe does not remember any more that ſhe aſked her, but that ſhe juſt told her they had been lying in that manner for a conſiderable time, and that there was ſuch a great moving and ſhaking of the bed, that ſhe could not get the clothes kept on her. Interrogated, Did Miſs Munro tell her, that they were kiſſing one another? depones, She does not recollect that ſhe did, and that the witneſs did not aſk her. Interrogated, If you did not believe Miſs Pirie to be a man, what ſort of wickedneſs did you ſuppoſe had taken place? depones, She can give no account of it, but ſhe thinks ſhe has read ſomething about it in the Bible, but ſhe does not recollect what it is. Interrogated, Is it in the Old or New Teſtament? depones, That ſhe is not ſure, but certainly thinks it is in the New Teſtament. Interrogated, Did you ever hear of ſuch wickedneſs being actually practiſed, or how it was practiſed? depones, That ſhe never did by any other women, nor has ſhe heard how it was practiſed. Interrogated, Did the witneſs tell Miſs Munro that it was a wickedneſs mentioned in the Bible? depones, That ſhe does not think ſhe did. Interrogated, Can ſhe mention any other circumſtance, from which ſhe inferred that Miſs Pirie and Miſs Woods were lewd, or indecent, or criminal with one another? depones, That ſhe cannot. Being interrogated by the Lord Juſtice-Clerk, What was her reaſon for adding, *If it be true*, when ſhe ſaid to Miſs Munro that it was a dreadful thing, and that the purſuers ſhould be burned? depones, Becauſe it was ſo extraordinary a circumſtance, but that ſhe did not in the leaſt doubt Miſs Munro was telling the truth. Being interrogated by the Lord Juſtice-Clerk, that as ſhe has deponed that ſhe was not told they were kiſſing one another, and that Miſs Munro did not tell her any other circumſtances from which ſhe

inferred

A inferred that they were lewd, indecent or criminal, except that Miſs Pirie was lying above Miſs Woods, and that the bed was ſhaking, without any explanation of thoſe circumſtances, How ſhe came to think and ſay to Miſs Munro, that their conduct was ſo dreadful that they ſhould be burned? depones, That ſhe cannot
B ſay, but that ſhe certainly did think, and does ſtill think, that it was very bad indeed. Interrogated, Whether, upon the firſt Saturday, in converſation with Miſs Munro, ſhe inquired at her, or learned from her that ſhe had had any communication with any of the ſcholars, or with any other perſon, about the intercourſe
C between the purſuers? depones, That ſhe did not aſk, nor did Miſs Munro tell her. Interrogated, Whether ſhe mentioned it was dark when Miſs Pirie firſt came to Miſs Woods? depones, That ſhe thinks Miſs Munro ſaid it was dark. Interrogated, If Miſs Munro exlpained to her how ſhe came to know in the dark
D it was Miſs Pirie who lay above Miſs Woods? depones, That ſhe did not, but juſt told her generally, that Miſs Pirie lay above Miſs Woods, and that the witneſs ſo took it without farther explanations. Being interrogated, Whether ſhe aſked at Miſs Munro any thing about the manner in which the purſuers lived at the
E ſchool, and whether they had not other opportunities for ſuch kind of improper intercourſe, without coming to each other's beds, in which young ladies were mutually ſleeping with them? depones, The witneſs made no ſuch inquiry, and ſhe did not learn whether the miſtreſſes went to bed at the ſame time with the
F ſcholars. Interrogated, Whether Miſs Munro explained why ſhe was ſo frightened? depones, It was juſt by the ſhaking of the bed, and the circumſtance of the two being together. Being interrogated, Whether, on the firſt Saturday Miſs Munro mentioned to her that ſhe had ever been ſo frightened more than once? de-
G pones, Only once on the occaſion ſo deſcribed. Interrogated, How far ſhe had proceeded in her ſtory to Miſs Murdoch? depones, That ſhe had told her there was ſomething very improper at the ſchool, and that Miſs Pirie came to Miſs Woods' bed; but Miſs Murdoch interrupted her, ſaying ſomething like, O Mary is
H that true? and immediately left the room; and the witneſs had no other opportunity of reſuming her ſtory. Interrogated, If ſhe told Miſs Munro that Miſs Murdoch would not liſten to her? depones, That ſhe had no opportunity next day, but ſhe did the Saturday afterward, but by that time Miſs Murdoch was gone to
I Glaſgow. And being interrogated, Whether Miſs Munro explained to her why Miſs Pirie anſwered that ſhe was ſtanding by the

bed.

bed-ſide, and not in the bed? depones, That Miſs Munro mentioned having bid her go away, for ſhe could not get ſleep in bed for her; upon which Miſs Pirie anſwered, 'I am not in bed, but ſtanding 'by the bed-ſide;' but Miſs Munro told the witneſs that Miſs Pirie was in bed when ſhe made that anſwer, &c.

The Judges adjourned till to-morrow at the ſame place, at ten o'clock in the morning.

Edinburgh, 20th March 1811.

In preſence of the following Judges: The Right Honourable Lord JUSTICE-CLERK, Lord MEADOWBANK, Lord ROBERTSON, and Lord NEWTON, and of the Counſel and Agents for the parties.

Compeared Miſs JANE CUMMING, the reputed grandaughter of the defender, as being the natural daughter of the defender's deceaſed ſon, againſt whom an objection was ſtated by the purſuers' counſel, and an anſwer was made thereto by the counſel for the defender; which objection and anſwer, the Judges appointed to be reduced into writing, and lodged with the clerk; and the Judges having conſidered the ſaid objection and anſwers, repel the objection to the admiſſibility of the witneſs, and allow her to be received *cum onere*, reſerving all objections to her credibility. And the witneſs being accordingly called in, and being ſolemnly ſworn, and purged of malice and partial counſel, examined and interrogated, depones, That ſhe is paſt ſixteen years of age. Depones, That ſhe was a boarder at the ſchool of the purſuers, and went there in November 1809: That there were ſummer holidays while ſhe was there: That ſhe thinks the holidays began on the 20th of June, and that the young ladies left the ſchool during theſe, but the deponent remained at ſchool, Depones, That during the holidays, Miſs Pirie and Miſs Woods ſlept together, and the deponent ſlept in the ſame room, in a bed at the foot of theirs: That before the holidays began, the deponent ſlept with Miſs Pirie, and had ſo done from the firſt time that ſhe went to ſchool. Depones, That during theſe holidays, while Miſs Pirie and Miſs Woods ſlept together, the witneſs was oftener than once diſturbed early in the morning. Interrogated, What kind of diſturbance it was? depones, That they were ſpeaking and kiſſing, and ſhaking the bed. Depones, That after the holidays, the witneſs again ſlept with Miſs Pirie. Depones, That Miſs Woods after the holidays went to ſleep in another

A other room: That she does not recollect who first slept with her, but Miss Hunter was her bedfellow when she, Miss Hunter, came to the school; and she continued to be so till Miss Munro came, and then Miss Munro slept with her. Being interrogated, If, during the time while the witness slept with Miss Pirie, Miss
B Woods came to her bed? depones, That she did. And being interrogated, If she came oftener than once? depones, That she did. Being interrogated, If, on any of these occasions the witness was wakened from her sleep? depones, She was. Interrogated, What it was that wakened her; and what did she observe on the first
C occasion of her being so wakened? depones, That she only heard them whispering and kissing one another; and these were the only circumstances she observed upon her wakening. Interrogated, When Miss Woods came next time to Miss Pirie's bed, What did the witness observe? depones, She had come different times, when
D the witness only heard kissing and whispering. Interrogated, If, at any time when Miss Woods came to Miss Pirie's bed, the witness heard any thing more than kissing and whispering? depones, Yes. Interrogated, What was it? depones, She heard Miss Pirie say one night, 'O you are hurting me.' Interrogated, If she
E heard or observed any thing more? depones, She heard Miss Woods one night ask Miss Pirie if she was hurting her. Interrogated, If on any of those occasions, Miss Woods was in the bed with Miss Pirie and the witness? depones, Yes, both times. Interrogated, How Miss Woods and Miss Pirie were lying on those
F occasions? depones, One of them was lying above the other. Interrogated, Were they in that situation when Miss Pirie said, 'O 'you are hurting me,' as above deponed to? depones, Yes. Interrogated, and desired to mention all that she heard, saw, felt or observed on any occasion, when Miss Woods came to Miss Pirie's
G bed, and to tell all that she knows of the matter, as fully and distinctly, and as nearly in the order of time as she can? depones, That she does not remember the different times: That she has been awakened different times by their kissing and whispering, but did not know what: That she heard Miss Pirie say one time, 'O you
H 'are hurting me;' and she heard Miss Woods one time ask Miss Pirie if she was hurting her, and Miss Pirie said, No; and she heard Miss Pirie say one night, 'You are in the wrong place,' and Miss Woods said, 'I know;' and Miss Pirie said, 'Why are you doing 'it then?' and Miss Woods said, 'For fun;' and she wakened one night with a whispering, and heard Miss Pirie say, 'O do it, darling,' and Miss Woods said, 'Not to night;' Miss Pirie asked her

her two or three times, and then Miſs Woods ſaid, ‘ O not to A
‘ night, for it may waken Miſs Cumming, and perhaps Miſs Stir-
‘ ling;’ then Miſs Pirie preſſed her again to come in, and ſhe
came in, and ſhe lay above Miſs Pirie: That Miſs Woods began
to move, and ſhe ſhook the bed, and ſhe heard the ſame noiſe as
ſhe heard in the holidays. And being deſired by the Lord Juſtice B
Clerk, to deſcribe the kind of noiſe as near as poſſible, depones,
That putting one's finger into the neck of a wet bottle, is the
likeſt deſcription ſhe can give of it: Then the witneſs aſked Miſs
Pirie what was ſhaking the bed ſo, and Miſs Pirie anſwered, ‘ No-
‘ thing;’ and when ſhe ſo aſked Miſs Pirie what was ſhaking the bed, C
ſhe felt Miſs Woods move over to the other ſide of the bed; and
ſhe thinks it was that night ſhe heard Miſs Woods ſay, ‘ I would
‘ like better to have ſomebody above me:’ She wakened another
night, and ſhe heard Miſs Woods ſay, ‘ Now Jane, will you pro-
‘ miſe me one thing?’ and Miſs Pirie anſwered, ‘ I don't know; D
‘ What is it?’ and then Miſs Woods ſaid, ‘ Now Jane, will you
‘ promiſe not to come to my bed, or take me in your arms till the
‘ holidays?’ and Miſs Pirie replied, ‘ O Mary-Anne don't aſk me,
‘ for you know I could not keep it if I were to promiſe;’ and then
Miſs Woods ſaid, ‘ O do promiſe, and I'll take care you ſhall keep E
‘ it;’ but Miſs Pirie would not promiſe; but Miſs Woods ſaid, as if
Miſs Pirie had promiſed, ‘ Nor will I take you in my arms, or
‘ come to your bed till the holidays; but you may kiſs me, and I
‘ will kiſs you;’ and then Miſs Woods went away, and ſhe does not
recollect any thing elſe that happened on this occaſion; but on the F
former night when the witneſs ſpoke, the witneſs lay awake a long
while, and complained that ſhe could not ſleep, and Miſs Pirie de-
ſired her ſeveral times to turn her face to the wall, and try to
ſleep, but the witneſs did not turn, and ſaid, that ſhe could not
ſleep, and then Miſs Pirie turned and ſaid, ‘ Now you muſt turn G
‘ as I have turned,’ and then ſhe heard Miſs Woods go out of the
room; and when Miſs Woods came to the door, Miſs Pirie cough-
ed, that the witneſs might not hear it opened; and a little while
after Miſs Woods was gone, Miſs Pirie ſaid to the witneſs, Have
you heard Miſs Woods cough to night? and the witneſs ſaid, No; in H
a little Miſs Woods coughed, and Miſs Pirie ſaid, ‘ O there ſhe's
‘ coughing, poor ſoul, I muſt go and ſee her;’ and ſhe went; when
Miſs Woods came to bed that night, the witneſs felt them both
lift up their ſhifts; and the next morning before breakfaſt, in the
little garden in front of the houſe, the witneſs told it to Miſs Mun-
ro, and Miſs Munro ſaid, that the other night Miſs Pirie had been

A in Miſs Woods' bed, and ſhe heard a curious noiſe, and wonder-
ed, but did not know what it was; but after what the witneſs had
told her, ſhe would watch the next night; and afterwards Miſs
Munro told the witneſs it was all as ſhe had ſaid; and when they
came in from their walk on the ſame day, Miſs Munro and ſhe
B were talking of it in the ſchool-room, and the maid Charlotte came
in, and the witneſs told Miſs Munro to hold her tongue, and Char-
lotte ſaid, 'O you need not, it is long ſince I have known it;' that
ſhe had ſeen them lying in the ſofa as ſhe went up ſtairs to the
drawing-room; and another day ſhe went to the drawing-room,
C and went to both the doors, but they were both locked, and Miſs
Pirie ſaid, 'Who's there;' and Charlotte ſaid, 'It is me;' and Miſs
Pirie ſaid, 'What do you want?' and Charlotte replied, 'I want to
'get in;' that Miſs Pirie ſaid, 'You muſt come back again; we are
'buſy juſt now;' and Charlotte ſaid ſhe ſaw them quite well what
D they were doing: That another day, Charlotte came to the
ſchool-room door, and called out the witneſs and ſaid, 'They
'are at it juſt now:' That ſhe had been up in the dreſſing-room,
that the bed was ſhaking, and they were making ſuch a noiſe, they
did not hear her; and Charlotte went to the bed, and ſaid, 'It's
E 'near nine o'clock Ma'am;' then Miſs Pirie came out of the
bed in a great hurry, with her face quite red, and ſaid, 'What
'do you ſay, Charlotte?' and went away to dreſs herſelf, and
Miſs Woods hid herſelf in the clothes. The witneſs here
recollecting that ſhe had forgot ſomething that happened on the
F former occaſion, when ſhe aſked Miſs Pirie what made the bed
ſhake ſo, adds, that the next day ſhe bid the girls look at Miſs
Woods, for ſhe thought ſhe would not ſpeak to her, and then Miſs
Woods came into the room, and went out again, and none of the
girls had looked at her; and witneſs told them again to look at
G her when ſhe came back; and when ſhe came back all the girls
went up and ſhook hands with her; but when the witneſs went
up ſhe turned away with her face quite red, and did not ſpeak
to the witneſs the whole day till after dinner, when the witneſs
went up and ſpoke to her; Miſs Munro and the witneſs wiſhed
H to let them know that they knew it, and were to have ſpoken of
it at breakfaſt time, but they loſt courage: That on the ſame
day when they were out walking, ſhe told Miſs Munro that ſhe
would complain of it, and of being tired, and that ſhe could not
get ſleep, and ſhe deſired Miſs Munro to put the queſtion to her,
Did you not ſleep well? and that the witneſs would anſwer, ſhe
could not ſleep, for the bed was ſhaking ſo; and when they came
in from their walk, Miſs Pirie was in the room, and the witneſs
did

did complain, and the converſation took place as had been agreed on. Depones, That Miſs Pirie ſtaid in the room for ſome time, but when ſhe ſaw that they perſiſted in it, ſhe left the room with her face quite red, and the witneſs ſaid to Miſs Munro, 'O do 'you ſee guilt in her face:' That ſhe does not think any of the other girls were then in the room. Depones, That once or twice, when Miſs Woods had come to Miſs Pirie's room, ſhe heard Miſs Woods ſay to Miſs Pirie, 'Good night, darling, I think I 'have put you in the way to get a good ſleep to-night;' and ſometimes Miſs Pirie would ſay, 'No;' and then Miſs Woods continued; other nights Miſs Pirie did not ſay any thing, and then Miſs Woods went away. Depones, That ſhe has heard the maid Charlotte call them brutes and beaſts, and worſe than beaſts, and ſhe has ſeen Charlotte put out her tongue at them. And being interrogated, How the purſuers behaved? depones, They were not preſent; and ſhe (Charlotte) has ſaid, 'They are pretty ladies: I am a better lady myſelf.' Depones, That Miſs Munro told her, that one night when they were in her bed, ſhe wakened with the noiſe they were making, and that Miſs Woods had turned, and ſeeing Miſs Munro awake, ſhe turned to Miſs Pirie, and ſaid to Miſs Pirie in a whiſper, 'Good gracious what ſhall we 'do, ſhe's wide awake?' and that then Miſs Pirie covered herſelf up with the clothes, and that then Miſs Woods ſaid to Miſs Munro, 'How long have you been awake,' and Miſs Munro anſwered, 'A long time;' and then Miſs Woods ſent her to the dreſſing-room for a glaſs of water, and as ſhe was coming out of bed, ſhe ſaw Miſs Pirie below the clothes, and that ſhe thought it was to let Miſs Pirie out of the room, that Miſs Woods ſent her to the dreſſing-room, and that ſhe hurried back as faſt as ſhe could, and juſt as ſhe came in again ſhe ſaw Miſs Pirie go out of the door. And depones, That ſhe does not recollect any thing elſe. Being interrogated, Whether Miſs Stirling was preſent at any of the converſations the witneſs had with Miſs Munro on this ſubject? depones, Yes, ſhe muſt have been preſent, for ſhe adviſed them to let the purſuers know that they knew it. And being interrogated, Whether Miſs Stirling was preſent at any of the converſations the witneſs had with Charlotte on the ſubject? depones, She was in the room, but ſhe does not know whether ſhe was ſpeaking to her. Depones, That ſhe has often miſſed Miſs Pirie out of bed ſome nights after ſhe had been in bed, and ſome nights after ſhe had not been in it at all; and one night when Miſs Pirie was out of bed, Miſs Stirling and ſhe were talking about it, their beds

A being quite close, and meanwhile Miss Pirie came in, and when she came into bed, she said, 'O if I were rich, I would always 'have two beds in summer:' That one night before she had observed any thing at all between them, she saw Miss Woods and Miss Pirie come into the bed-room, and both of them had nothing
B on but their night-shifts, and the witness sat up in bed, and was quite surprised to see them, and Miss Woods went to the foot of the witness's bed as if to hide herself, but the witness saw her quite plainly, as the window was opposite to the foot of the bed, and Miss Pirie went out of the room, but the witness does not know what became of Miss Woods, as she fell asleep. Depones, That
C one Sunday the witness had been out at Mr Forbes's at dinner, and when she returned and went up stairs, and was going through her own room to the dressing-room to lay by her things, she saw the bed clothes all turned down, and the witness said to Miss Cunynghame,
D who was with her, 'Who can have destroyed all my bed?' and Miss Cunynghame answered, 'O it will be Miss Woods and Miss 'Pirie for they were up stairs together a long time;' and then when they came up at night, the witness asked Miss Pirie if she had been in the bed, and she said Yes; and she is certain all the
E girls must have observed Miss Pirie sometimes take Miss Woods out of the school-room, as if against her consent, into the drawing-room when it was dark, and stay there a considerable time; one morning when the witness went into the dressing-room, all the girls were laughing; and on the witness asking what they were
F laughing at, they said they were laughing at Miss Pirie coming out of Miss Woods' bed with her stockings on, and a red garter; and Miss Edgar has frequently told the witness that she had been disturbed with the noise that Miss Woods and Miss Pirie were making in the room, and she does not remember any thing more.
G All which is truth, &c.

The Judges adjourned till Friday at ten o'clock.

Edinburgh, 22d March 1811.

H In presence of the following Judges: The Right Honourable Lord Justice-Clerk, Lord Meadowbank, Lord Robertson, and Lord Newton, and of the Counsel and Agents for the Parties.

I Mr Clerk, for the pursuers, stated, as in a minute apart, to which Mr Erskine made an answer, also apart.

Thereafter

Thereafter compeared Miſs JANE CUMMING, a witneſs formerly ſworn and examined *in cauſa*; who being interrogated by the Lord Juſtice-Clerk, If when Charlotte told her that 'ſhe ſaw 'them quite well,' what they were doing, as deponed to on page 42., ſhe mentioned to the witneſs in what manner, or by what means ſhe had ſeen them? depones, That ſhe ſaid ſhe had ſeen them through the key-hole. And being interrogated for the purſuers, Why did you not tell that Charlotte had ſeen them through the key-hole, when you were laſt examined? depones, She forgot, and ſhe thought ſhe would be aſked again. Interrogated, Did you think you would be aſked again during the laſt examination? depones, She did not know, but ſhe thought ſhe would be aſked before it was over. Interrogated, Did ſhe recollect it at any time during the laſt examination, and before ſhe left the houſe? depones, Yes. Interrogated, Why did you not add that circumſtance to your other additions and explanations, made after reading over your depoſition? depones, That ſhe did not know ſhe would get leave to alter any thing. Interrogated, Since you were expreſsly told, that you would get leave to make additions and explanations, and did make ſeveral additions and explanations, Why did you not at leaſt mention that one? depones, She had forgot it again at that time. Interrogated, Were you ever told that there was no key-hole to either of the doors of the drawing-room? depones, No, ſhe does not think ſhe ever was. Interrogated, Are there key-holes to the drawing-room doors or not? depones, She does not know. Interrogated, Did you never obſerve theſe doors after Charlotte told you the ſtory? depones, No. Interrogated, Did you never think of examining how Charlotte could ſee through the key-hole of the drawing-room door? depones, No. Interrogated, and deſired to explain more particularly, what Charlotte ſaid with reſpect to looking through the key-hole of the drawing-room door? depones, That Charlotte ſaid nothing more particular, than that ſhe had ſeen them quite well through the key-hole. Interrogated, Did Charlotte tell you that ſtory about the key-hole more than once? depones, She does not remember. Interrogated by the Lord Juſtice-Clerk, When Charlotte told her, ſhe ſo ſaw them through the key-hole, Did ſhe tell her that they were lying on the ſofa? depones, That ſhe did not. Interrogated for the purſuers, Are you perfectly certain that Charlotte told you the ſtory even once? depones, She is quite certain. Interrogated, When did ſhe tell you? depones, She does not remember, but it was after Miſs Munro came to the ſchool; and that it was after Miſs Munro and ſhe had talked about the matter. Interrogated, Do

did not.

L8 13

A Do you remember the day of the week when Charlotte told you the ſtory? depones, She does not. Interrogated, At what time of the day was it? depones, She does not remember. Interrogated, Was it before or after dinner? depones, She does not remember. Interrogated, Who was preſent when Charlotte told the ſtory? de-
B pones, She does not remember if there was any perſon preſent. Specially interrogated, Was Miſs Munro preſent? depones, She does not remember. Interrogated, Did you aſk Charlotte any queſtions about the ſtory? depones, She does not think it. Inter-
rogated, Did Charlotte tell you what ſhe ſaw through the key-
C hole? depones, No, ſhe juſt ſaid ſhe ſaw them. Interrogated, Did ſhe tell you what they were doing? depones, That ſhe had been talking to Charlotte about it, but does not remember what ſhe ſaid, and Charlotte ſaid ſhe ſaw them through the key-hole. Interrogated, Did Charlotte tell you that ſhe had ſeen them through
D the key-hole on two different occaſions, or only that ſhe ſaw them on one through the key-hole? depones, Only once. Interrogated, Did Charlotte tell you what they were doing on the other occa-
ſion, when ſhe ſaw them as ſhe was going up to the drawing-room? depones, That Miſs Munro and ſhe were ſpeaking about it when
E Charlotte came into the room, and Charlotte ſaid ſhe had ſeen them doing the ſame, and that was all. Interrogated, Was this at the ſame time when ſhe mentioned the ſtory of the key-hole? depones, She does not remember. Interrogated, What were Miſs Munro and you ſpeaking of? depones, They were ſpeaking of what
F had happened the night before. Interrogated, What did Miſs Munro or you ſay in Charlotte's hearing before ſhe ſpoke to you? depones, She does not remember. Interrogated, Where did Charlotte ſay ſhe was when ſhe ſaw them in coming up to the drawing-room? depones, She ſaid ſhe was on the outer ſtair when ſhe ſaw
G them lying on the ſofa. Interrogated, What did Charlotte ſay they were doing on the ſofa? depones, They were talking of what had happened the night before, when Charlotte came into the room, and as Charlotte ſeemed to know it, they did not ſtop, and ſhe ſaid they were doing the ſame on the ſofa. Interrogated,
H Did Charlotte ſay that their dreſs was in diſorder when they were on the ſofa? depones, No. Interrogated, Did ſhe ſay that they were kiſſing? depones, No. Interrogated, Did ſhe ſay that the one was lying above the other? depones, No. Interrogated, Do you know exactly what your age is? depones, That ſhe does not know exactly,
I but has been told, and underſtands that ſhe is going ſeventeen. Interrogated, Can ſhe mention the year in which ſhe was born? depones,

depones, She understands about the end of 1795, or beginning of 1796. A
Interrogated, Was she born in India? depones, She was, at Patnah. Interrogated, When did she first arrive in Britain? depones, In 1803, but she does not remember in what month. Interrogated, Does she recollect any thing that happened to her in India? depones, She remembers she was at school. Interrogated, Can she mention any thing B
else? depones, She remembers she was at two schools, but does not recollect how long. Interrogated, Was she acquainted with girls of her own age in India? depones, She was with many. Interrogated, Who took the charge of her? depones, it was a Mr Palmer she thinks, but she boarded at the schools. Interrogated, Whether C
any women took the charge of her, and who were they? depones, She does not remember, except the school mistresses. Interrogated, Whether any women servants at school were natives or Europeans? depones, There were, and they were natives. Interrogated, Whether does she mean to say, that she is past fifteen, D
or past sixteen? depones, past sixteen in the end of last year, or beginning of this. Interrogated, When she sailed for Britain, who attended her? depones, a maid-servant, a native, who went back to India. Interrogated, How long did the maid continue in this country before she went back? depones, She is not sure, E
but she thinks about half a year. Interrogated, Were the school mistresses in India, natives or Europeans? depones, The first was European, and she does not know whether the second was or was not. Depones, That she herself had not learnt to speak English before she left India. Interrogated by the Lord Justice-Clerk, Whe- F
ther, while she was in India at school, or otherwise, she ever heard or observed among the children or others, any such practices as she has described took place between the pursuers? depones, Never. And interrogated, If she ever heard any coversation about such
things? depones, Never. Interrogated by Lord Meadowbank, Was G.
the language which the women at school held to each other, and to the witness always perfectly correct? depones, She recollects nothing to the contrary. Interrogated for the pursuers, Did she never hear any language in India, that upon recollection, she now thinks was improper? depones, She did not. Interrogated, H
and desired to mention where she was carried when she arrived in Britain, who attended her, and when she was sent to a boarding-school at Elgin? depones, She thinks she landed at Greenwich, and was taken to London to the house of Mr George Cumming,
where she remained a week or a fortnight, and she and the maid I
were then brought down to Scotland by a Mr Tulloch, and she

A remained ſome time with Lady Cumming, but does not remember how long, and was then ſent to a boarding-ſchool at Elgin, kept by Miſs Charles. Interrogated, How long did ſhe remain at that boarding-ſchool? depones, She is not ſure, but ſhe thinks it was ſix years. Interrogated, What was ſhe taught there? depones,
B reading, writing, ſpelling and arithmetic, French, muſic, and work. Interrogated, Was ſhe taught to read in India? depones, Yes. Interrogated, Was it Engliſh? depones, Yes, ſhe was taught to read it, although ſhe could not ſpeak it. Interrogated, At Miſs Charles boarding-ſchool, had you any or much time allowed you
C for play? depones, Yes, that in winter, they had between two and three, and between five and ſix, not actually in ſchool, but they had to take their dinner and tea off theſe hours, and alſo to get their leſſons, and in ſummer after the writing-maſter went away at ſeven o'clock, they were allowed to walk, but were always
D obliged to be in before nine in the evening. Interrogated, Were they ever allowed to walk by themſelves, or was the miſtreſs always with them? depones, They got leave to walk by themſelves. Interrogated, Did you ever play with the other girls belonging to the town? depones, Never, but with their own ſchool. Interroga-
E ted, After leaving the ſchool at Elgin, did ſhe come immediately to Drumſheugh, or ſoon after? depones, Soon after. Interrogated, Did ſhe find the diſcipline of the ſchool at Drumſheugh, more or leſs ſtrict than at the ſchool at Elgin, and had ſhe more or leſs time for amuſement? depones, The diſcipline was more ſtrict, and
F they had leſs time for amuſement. Interrogated by Lord Meadowbank, Had they no perſon to take charge of them when they went out to play at Elgin? depones, They went out but a very little way; that there was a hill at the back of the houſe, and they always went there, and ſometimes Miſs Charles went with them.
G Interrogated for the purſuers, Were the Miſs Dunbars at that ſchool? depones, They were there before the witneſs went, and they were taken away before the witneſs left it. Interrogated, Were you and the Miſs Dunbars allowed to go and bathe by yourſelves? depones, No, ſhe does not think they ever bathed while
H there. Interrogated, Did you feel the diſcipline of the ſchool at Drumſheugh harraſſing or diſagreeable, compared with that of the Elgin ſchool? depones, She thought it much more ſtrict, but not diſagreeably ſo. Interrogated, Were you frequently expoſed to the puniſhments of the ſchool? depones, Yes, ſhe was pretty often.
I Interrogated, Did you ſeldom eſcape a ſingle day without being puniſhed

punished for some thing or another? depones, No, she was not in punishment every day. Interrogated, Do you know what the disgrace book is? depones, No, she remembers a disgrace table, but she does not remember a disgrace book. Interrogated, Did the witness keep a book in which she wrote down from time to time the punishments she was exposed to? depones, She did for a short time before she came away. Interrogated, Did she keep that book of her own accord? depones, She did it of her own accord. Interrogated, Have you that book still, and if so, you are desired to produce it? depones, She has it still, and will give it to the clerk. Interrogated, Have you altered it since you left Drumsheugh? depones, She has not. Interrogated, Did she observe any thing particular in the conduct of the pursuers to each other, previous to the summer holidays, after you went to Drumsheugh? depones, She did not. Interrogated, Did she observe any thing like indecency in their conduct previous to that time? depones, *Negatived*. Interrogated by the Lord Justice-Clerk, What number of scholars were at the school when she first went there? depones, There was one boarder besides herself, and one day scholar, and that previous to the summer holidays there came at different times, but she does not remember when, the Miss Edgars, Miss Hunter and Miss Anstruther as boarders, and the Miss Dunbars, and Miss Dewar, and Miss Stewart as day scholars. Interrogated for the pursuers. During the time that you slept with Miss Pirie previous to the holidays, did you observe any thing particular in her conduct to yourself, or to any other of the scholars? depones, She did not. Interrogated, During the holidays, did you observe any thing in the conduct of the pursuers to each other more than you have already deponed to? depones, She did not. Interrogated, Did you hear that kind of noise like putting one's finger into the neck of a wet bottle oftener than once? depones, She has. Interrogated, How often did she hear it? depones, She does not remember. Interrogated, Did you hear that noise during the holidays? depones, She did. Interrogated, Did she hear it oftener than once, or upon different occasions during the holidays? depones. That she did upon more occasions than one. Interrogated, If she ever heard that noise excepting in the morning? depones, Never at night, excepting on the night formerly deponed to, which was after the holidays, and when she spoke to them. Interrogated, If she always heard that kind of noise when she heard them speaking and kissing? depones; Not always. Interrogated, How often did she hear them speaking and kissing during the holidays? depones, She does not remember

A member, but it was frequently. Interrogated, Did ſhe hear it every morning during the holidays? depones, She did not. Interrogated, At what time in the morning did ſhe hear it? depones, She does not know, but it was very early. Interrogated, If ſhe ever ſaid that the noiſe ſhe heard was like a wet noiſe? depones, B She has. Interrogated, If ſhe can give any better or more particular deſcription of the ſort of noiſe it was? depones, She cannot. Interrogated, When ſhe heard the purſuers ſpeaking and kiſſing and ſhaking the bed in the mornings during the holidays did it occur to her that they were then doing any improper act? depones, C that it did not. Interrogated, At this time did you feel that degree of reſpect for them as your ſchool-miſtreſſes that you think ought to be felt towards people in that ſituation? depones, She did. Interrogated, Had they always behaved properly, according to the beſt of your judgment, in other reſpects? depones, She does D not remember if ſhe took any notice of their conduct. Interrogated, When did it firſt occur to you that their conduct to each other was wrong? depones, That ſhe does not remember, during the holidays, but that after the holidays they uſed to quarrel very often. Interrogated, Did you think that their quarrelling was wrong? F depones, That ſhe did not think it was right, but ſhe does not remember that ſhe thought it was wrong, but ſhe wondered at it becauſe at other times they ſeemed to be ſo fond of each other. Interrogated, Did the witneſs conceive that any thing improper, indecent, or criminal was done by the purſuers when in bed in the mornings during the holidays? depones, She did not. Interrogated, Does ſhe now conceive or believe that any thing improper, indecent or criminal was done between them on thoſe occaſions? depones, She thinks it was very improper, and very indecent, but ſhe does not know whether it was criminal. Interrogated, Since G it did not occur to you at the time that it was improper or indecent, when did that firſt occur to you? depones, When they came into her bed. Interrogated, and deſired to recollect as nearly as poſſible when it was, and how long after the holidays, that Miſs Woods, by coming into Miſs Pirie's bed, and along with Miſs Pirie, doing what ſhe has deponed to, made the witneſs think the conduct of the purſuers improper and indecent? depones, She dares ſay it was about two months after the holidays before ſhe thought there was any thing improper or indecent in what they did. Interrogated, Does ſhe mean to ſay that till near the end of September it did not occur to her that the conduct of the purſuers to each other was indecent, which would be about three weeks after Miſs Munro came to ſchool? depones, That ſhe is certain it

was

was after Miſs Munro came to the ſchool, but ſhe does not remember exactly when. Interrogated, Did ſhe think, or was ſhe ſatisfied that the purſuers' conduct was indecent before Miſs Munro told her what had happened in her bed? depones, That ſhe thought ſo before that. Interrogated, How long before? depones, She thinks it was a month after the holidays that ſhe began to ſuſpect it, and this was a little before Miſs Munro came to the ſchool, and that it was two months after the holidays, before ſhe was ſure of it. Interrogated, Did the ſuſpicion ariſe in her mind in conſequence of her own reflections, or in conſequence of any thing ſhe heard from any other perſon? depones, That it firſt aroſe in her mind from her own reflections, before ſhe had any converſation with any perſon on the ſubject. Interrogated, Had ſhe any converſation with other perſons before ſhe became ſure that the purſuers had been guilty of indecency together? depones, She is ſure ſhe had not. Interrogated, Whether ſhe became ſure that they had been guilty of indecency entirely from her own reflections and obſervations on what paſſed between them? depones, Yes. Interrogated, Whether it was a mere ſuſpicion of indecency or certainty of indecency that occurred to her mind, when Miſs Woods came firſt to Miſs Pirie's bed, as above deponed to? depones, That Miſs Woods had been frequently in the witneſs's bed before ſhe thought at all about it, and afterwards when ſhe began to think about it, ſhe only ſuſpected that ſomething was improper, and afterwards became ſure of it. Interrogated, Did ſhe begin to ſuſpect it, in conſequence of any particular meeting between the purſuers, and if ſo, ſhe is deſired to mention when it was, and which of the meetings formerly mentioned, and if none of them, what meeting was it? depones, That it was becauſe Miſs Woods came into Miſs Pirie's bed, and ſhe heard them ſpeaking, and felt them moving. Interrogated, Did ſhe become certain that they were indecent at any particular meeting, and if ſo, what meeting was it; and ſhe is deſired to mention what paſſed at ſuch meeting, and from what circumſtances ſhe became certain that they were indecent together? depones, That ſhe became certain of it that night when Miſs Woods came to Miſs Pirie's bed, and when ſhe aſked her to come in, and Miſs Woods ſaid, 'No, it would waken the witneſs, and perhaps 'Miſs Stirling.' Being interrogated, Whether ſhe means to ſay ſhe became certain merely from that converſation, or from what paſſed in the bed afterwards? depones, That it was from what paſſed in the bed afterwards, but it was the converſation which made her

Suspicion first from her own reflections

all first through nothing of the Conversation

1st Night of Certainty

A curious to obſerve what ſhould paſs. Interrogated, At what time did that meeting take place? depones, She thinks about two months after the holidays. Interrogated, and deſired to mention the circumſtances from which ſhe became certain that the purſuers were indecent together at that meeting; depones, That B when Miſs Woods came into bed, ſhe felt them both take up their ſhifts, and ſhe felt Miſs Woods move and ſhake the bed, and Miſs Woods was breathing ſo high and ſo quick. Interrogated, depones, Miſs Woods was lying above Miſs Pirie at this time, and ſhe heard the ſame noiſe ſhe has already deſcribed, and ſhe thinks it was the ſame night ſhe heard Miſs Woods ſay, ſhe would rather have ſomebody above her; and that theſe are all the circumſtances ſhe recollects at preſent. Interrogated by the Lord Juſtice-Clerk, How long the noiſe ſhe has deſcribed as reſembling a finger in a wet bottle, laſted? depones, She dare ſay for about five minutes D at a time. And interrogated, depones, It happened three or four times during that meeting, but does not remember whether it laſted as long as five minutes each time. Interrogated, Whether ſhe ever herſelf made any ſuch noiſe with her finger in a wet bottle, or if ſhe ever heard any other perſon make ſuch a noiſe with E their finger in a bottle? depones, She never did, nor did ſhe ever hear any perſon try to do ſo. Being interrogated, How ſhe came to deſcribe a noiſe which ſhe actually heard, by being moſt like to a noiſe which ſhe never heard? depones, Becauſe ſhe thought it would be the ſame. Interrogated, Was it any thing like the F drawing of a cork? depones, It was not. Interrogated, If it was like any perſon rubbing another? depones, It was not. Interrogated. Was it like a perſon clapping or patting another on the cheek or ſhoulder? depones, It was not. Interrogated, Whether it was like a perſon dabbling their hand in water? depones, It was not quite G like that, but it was more like it than any which has been ſuggeſted by the above interrogations. Being interrogated, If ſhe has ever heard a dairy-maid making up butter, and if it was any thing like a dairy-maid patting butter? depones, That it was, and it was ſo loud, that ſhe heard it in the holidays, though lying in H a ſeparate bed. Interrogated, Whether ſhe had ever heard any ſuch noiſe before or ſince, except between the purſuers? depones, She does not remember ſhe ever did. Interrogated, Whether any perſon had ever told her that any ſuch noiſe took place between perſons when they were indecent together? depones, No. Interro-I gated, How then this noiſe came to ſtrike her as one of thoſe circumſtances which made her certain that the purſuers were indecent together? depones, Becauſe ſhe felt Miſs Woods put down her

her hand juſt before ſhe heard it. Interrogated, and the queſtion repeated, How the noiſe came to ſtrike her as one of the circumſtances that made her certain they were indecent? after long ſilence, the witneſs made no other anſwer than repeating what ſhe had already ſaid. Interrogated, When, and to whom at the ſchool ſhe firſt mentioned this circumſtance of the noiſe ſhe had heard like a finger in a bottle? depones, She does not think ſhe mentioned it to any one at ſchool. Interrogated, As it was dark at the time, in what manner did ſhe feel them both put down their hands and pull up their ſhifts. After long ſilence, and being repeatedly queſtioned, the witneſs anſwered, With her leg. Interrogated, If, with her leg ſhe felt both their hands? depones, She did not feel their hands. Interrogated, How then ſhe felt them take up both their ſhifts? depones, She was lying quite cloſe to them, and felt quite well when they took up their ſhifts. Interrogated, Did ſhe diſtinctly feel them put down both their hands? depones, That her own arm was covered, and ſhe did not feel their hands, but felt them move their arms downwards, and with her leg ſhe felt their naked legs, and ſhe felt nothing naked higher up than their legs. Interrogated by Lord Meadowbank, Whether ſhe is poſitive ſhe felt the right arm of the one and the left of the other both moved down in order to lift up their ſhifts? depones, That ſhe is not poſitive they did both move down their arms, but is poſitive they both lifted up their ſhifts, becauſe afterwards ſhe felt both their naked legs with her leg, but ſhe felt no other part of their bodies naked, becauſe her own was covered. Interrogated, If ſhe had drawn up her own ſhift ſince her own leg was naked? depones She had not, but it had got up. Interrogated, As it was dark, how ſhe came to know that Miſs Woods was above Miſs Pirie more than Miſs Pirie above Miſs Woods? depones, She is certain of it, becauſe ſhe heard her breathing quick, and becauſe ſhe is pretty certain it was that night that Miſs Woods ſaid ſhe would rather have ſome one above her; and afterwards ſhe laid down her head between Miſs Pirie and the witneſs, and becauſe when the witneſs ſpoke, the perſon lying uppermoſt moved over to the other ſide of the bed, and afterwards went away. Interrogated, How ſhe was certain on other occaſions that Miſs Woods was lying uppermoſt? depones, That ſhe was not certain, and does not think ſhe has ſaid ſo. Interrogated, If the kiſſing ſhe heard was loud? depones, Not very loud, but loud enough for her to hear diſtinctly it was kiſſing. Interrogated, Whether they ſpoke in ſo audible a voice as to make the witneſs

quite

in the wrong place

A quite ſure that ſhe is not miſtaken in the converſation ſhe has related? depones, That they did. And being interrogated in particular, Whether, when ſhe ſtates, as above deponed to, that one of them ſaid to the other, 'O you are in the wrong place,' ſhe is quite certain that they might not have ſaid *on* the wrong place?
B depones, That ſhe is quite certain the words uſed were, 'in the 'wrong place.' Interrogated, and referred back to a former part of her depoſition, wherein ſhe ſaid, that ſometimes Miſs Woods would ſay, 'I think I have put you in a way to get a good ſleep,' and that when Miſs Pirie would ſay No, Miſs Woods continued,
C what did ſhe continue? depones, That ſhe continued to move and Miſs Woods, at leaſt ſhe thinks it was Miſs Woods was lying above Miſs Pirie, and depones that ſhe has two or three times heard Miſs Woods uſe the expreſſion to Miſs Pirie, that ſhe thought ſhe had put her in a way to get a good ſleep. Interro-
D gated, and deſired to ſay, How ſhe came to ſtate that Charlotte put out her tongue at the purſuers when they were not preſent? depones, That ſhe only meant ſhe was ſpeaking ſo diſdainfully and contemptuouſly of them, and putting out her tongue, but the laſt day ſhe was at the ſchool, Charlotte did put out her tongue at
E Miſs Woods, but it was behind her back, and ſhe did not ſee it. Interrogated by Lord Newton, Whether, on the occaſion when ſhe heard one of them aſk the other if ſhe was hurting her, ſhe heard immediately before the noiſe ſhe has deſcribed as of a finger in a bottle, depones, That ſhe did not hear that noiſe either
F before or after on that occaſion. On the depoſition being read over to the witneſs, ſhe depones, That when ſhe ſays on page 48, that ſhe did not think ſhe would get leave to alter any thing, ſhe meant to ſay ſhe did not know ſhe had ſuch liberty till ſhe left this room; and when the Lord Juſtice-Clerk, in the other
G room, explained to her that ſhe had ſuch liberty, ſhe had then forgotten the omiſſion. Depones further, That they were at Portobello during the laſt week of the holidays, and Miſs Cunynghame was alſo there: That the purſuers uſed to ſend them out to walk by themſelves, and when they returned, they once or twice found
H the door faſtened, and could not get in, and upon mentioning this to Charlotte, ſhe ſaid they had been in bed together, and were ſurely very fond of one another, but did not ſay that ſhe had ſeen them. Depones, That it was the drawing-room door which was faſtened, as above deponed to. Depones, That the purſuers did not
I ſleep in the drawing-room, but their bed-room was within it, and they heard them firſt unlock the bed-room door, and then the drawing-

How is this to be reconciled with her answers after coming about 1 hour & after Holidays & becoming Curious at two months

drawing-room door, and that this happened in the forenoon; and with reference to what is deponed to on page 59, lines 29 and 30, depones, That she further recollects, that when Miss Woods came into bed, Miss Pirie moved her leg over towards the witness, and that Miss Pirie had on her stockings that night, &c.

The Judges adjourned till to-morrow at ten o'clock.

Edinburgh, 23d March 1811.

In presence of the following Judges, the Right Honourable Lord Justice-Clerk, and Lords Meadowbank, Robertson and Newton, and of the Counsel and Agents for the Parties,

Compeared Miss JANE CUMMING, a witness, formerly sworn and examined in this cause, who being further interrogated for the pursuers, On what night was it that Miss Pirie had on her stockings? depones, It was on the night when Miss Pirie asked Miss Woods to come in; and Miss Woods refused, lest it might waken the witness and perhaps Miss Stirling. Interrogated, How did you know that Miss Pirie had on her stockings that night? depones, She felt her stockings. Interrogated, How, or in what manner did you feel her stockings? depones, With her foot and part of her leg. Interrogated, Did you feel Miss Pirie's stockings with both your feet? depones, No. Interrogated, Which foot? depones, Her left. Interrogated, How did you come to feel Miss Pirie's stockings with your left foot? depones, Because she was lying on Miss Pirie's right side; and when Miss Woods came in, Miss Pirie moved over her leg towards the witness. Interrogated, Whether, upon recollection, she now means to say, that she is not certain that Miss Woods lay above Miss Pirie except on one occasion? depones, That she thinks Miss Woods must have been uppermost more than once; because several times after, Miss Woods had said, 'Now my dear, I think I have put you in a way of getting a sleep;' and after Miss Pirie had made no answer, Miss Woods has risen and gone away, she thinks she must have been uppermost. Interrogated, Has she any other reason for thinking, Miss Woods must have been uppermost on these occasions? depones, She does not remember any other reason just now. Interrogated, Had Miss Woods her stockings on upon that night, when Miss Pirie had her stockings on? depones, She does not know, and she rather thinks not; because none of the girls ever said they saw Miss Woods with her stock-

 ings

Contradicted Miss M about Stockings

A ings on. Interrogated, Did Miſs Pirie wear her ſtockings on any other night? depones, She does not know that ſhe had them on any other night, except from the girls in the dreſſing-room laughing becauſe ſhe had them on; but ſhe does not herſelf remember ever to have felt them on upon any other occaſion than that above
B deponed to. Interrogated, Did you commonly lie near to Miſs Pirie in bed, or away from her? depones, She commonly lay near her. Interrogated, Did you commonly lie ſo near as to touch her? depones, She may have touched her with ſome part of her body, but does not know whether her feet were near her. Inter-
C rogated, How ſoon after the holidays was it, when Miſs Woods came to Miſs Pirie's bed the firſt time the witneſs obſerved her do ſo? depones, She does not remember. Interrogated, Was it a week after the holidays? depones, She does not remember. Interrogated, Was it a fortnight after the holidays? depones, She does
D not remember. Interrogated, Was it three weeks or a month, or five weeks or ſix weeks after the holidays, or can ſhe mark the time at all? depones, She is not quite ſure, but ſhe thinks it would be about two or three weeks. Interrogated, How many times did ſhe perceive Miſs Woods come to Miſs Pirie's bed while the witneſs ſlept with Miſs
E Pirie, after the holidays, until ſhe left the ſchool? depones, There were four times ſhe was in bed that ſhe is quite ſure of; but on

Four times remembered before Answering any thing about it

one of theſe times ſhe is not ſure whether Miſs Woods was above Miſs Pirie, but ſhe knows ſhe was much oftener in the bed before the witneſs thought any thing about it. Interrogated, How often was
F Miſs Woods in Miſs Pirie's bed, including every time the witneſs can recollect after the holidays? depones, She does not remember: That the four times ſhe alludes to ſhe was quite awake, but on the other occaſions ſhe juſt wakened, and heard them whiſpering and kiſſing, and fell aſleep again. Interrogated, When did the
G firſt of the four times happen? depones, She does not recollect. Interrogated, Did you mention to any perſon what happened on the firſt of the four times, and how ſoon after? depones, That ſhe never mentioned it to any perſon till ſhe did ſo to Miſs Munro in the front garden. Interrogated, How many of the four times
H had then happened? depones, They had all happened, and that was the morning after the laſt one. Interrogated by Lord Meadowbank, Whether Miſs Munro had ever ſpoken to the witneſs of any thing extraordinary happening to her previous to this morning, when the witneſs firſt communicated her obſerva-
I tions to Miſs Munro? depones, She does not think Miſs Munro

Keppley Mackenzie Keppley

ever

ever ſpoke to her about it till the witneſs mentioned it to her that morning. Interrogated for the purſuers, Does ſhe mean to ſay, that Miſs Woods did not come to Miſs *Pirie*'s bed after that morning? depones, She never heard Miſs Woods in the bed after that. Interrogated, At what time of the year was that? depones, She thinks it was about two months after the holidays. Interrogated, Was that the occaſion on which you firſt became ſure that the conduct of the purſuers to each other, was improper and indecent? depones, That ſhe had ſuſpected it before; but as ſhe herſelf did not know of any ſuch thing, ſhe was unwilling to allow herſelf believe it; but on that occaſion ſhe could not help believing it. Interrogated, What was it that you did not know of? depones, She did not know of any ſuch thing as that which ſhe has ſaid they were guilty of. Interrogated by the Lord Juſtice-Clerk, Whether before ſhe became ſure as above mentioned, that ſomething improper and indecent had taken place between the purſuers, ſhe had read in any book, or been imformed by any perſon, that ſuch vicious things were ſometimes practiſed between women? depones, Never. Interrogated, What interval of time may have paſſed between the firſt of the four times and the laſt? depones, She does not recollect. Interrogated, How long was it between the firſt of the four times and the ſecond of the four times? depones, She does not remember. Interrogated, Whether ſhe can mark the period of the ſecond or third time, or how long the third time was before ſhe communicated with Miſs Munro? depones, She does not recollect. Interrogated, and deſired to mention the particulars of what ſhe ſaid to Miſs Munro in the front garden as above deponed to, or afterwards, in relation to Miſs Woods coming to Miſs Pirie's bed, depones, That ſhe does not remember that ſhe told her any particulars, except, that Miſs Woods had come to Miſs Pirie's bed, and that they were lying above one another, and were moving, and that they had been going on that way for a long while, but ſhe did not know what they were doing. Interrogated by Lord Meadowbank, Whether ſhe communicated to Miſs Munro any notice of the particular noiſe that ſhe had obſerved between the purſuers? depones, She does not think ſhe mentioned it at all. Interrogated, Did ſhe mention the circumſtance of their pulling up their ſhifts? depones, She does not remember. Interrogated, Did Miſs Munro make communications to the witneſs of ſingular occurrences between the purſuers? depones, Nothing, except that Miſs Munro ſaid, the other night Miſs Pirie had been in Miſs Woods' bed, and that they were going

A B C D F. I C Does not think I mentioned noise to her I

— 2e 72. A
Forgets first
communication
with Miss Munro
2e also 8 & 9. A

going on in such a curious way, she could not think what they were doing. -Interrogated by Lord Meadowbank, Did Miss Munro then, or before that tim , mention to the witness, that she had waked in a fright the preceding night, thinking there was somebody in bed with Miss Woods, but was not certain whether or no. B Depones, She does not remember it. And being asked, If she is positive she did not? depones, She does not remember it just now. Specially interrogated, Whether she mentioned to the maid-servant any of the circumstances that occurred during her uncertainty as to their nature, but after she had begun to suspect that C they were vicious? depones, That she never spoke of it to any body till after she was sure. Interrogated, After she was sure of it, how soon did she mention it to the maid? depones, That the same morning that she had the conversation with Miss Munro in the front garden, they returned into the house, and continued the conversation, when the maid came in; and if the maid had not appeared to understand what they were talking about, she would never have mentioned it to the maid at all, and she had not mentioned it to the maid before. D Interrogated, That morning in the garden, did Miss Munro first mention the subject to E the witness, or the witness to Miss Munro? depones, That she first mentioned it to Miss Munro, and she was the first person the witness ever mentioned it to. Interrogated, When she mentions she felt nothing naked higher up than the pursuers' legs, what part of the body she meant by their legs? depones, That she cannot say F how high up she felt their legs naked, but that she is certain she felt their skin, and it was with the upper part of her own leg, and the under part of her thigh, about the knee, that she so felt it. And she again depones, That she cannot tell what part of their legs she felt naked, but she is certain it was above Miss Pirie's knee, G although she is not certain what part of Miss Woods' leg she felt. Interrogated, Whether, when Miss Woods came into bed, and she felt Miss Pirie move out her leg towards the witness, as above deponed to, Miss Woods was lying between Miss Pirie's legs? depones, She does not know. Interrogated, When she felt the H leg both of Miss Pirie and Miss Woods, was the one leg lying directly above the other? depones, No, they were not when she felt them. Interrogated, How then were the two legs lying? depones, That she is inclined to think that Miss Woods' leg was lying within Miss Pirie's. Interrogated, Whether then she put I her leg over Miss Pirie's so as to feel Miss Woods's? depones, She did not, but she is quite sure she felt both legs. Interrogated, In what

Sirds common with Munro fourth alb with Charlotte false.

what manner was her own leg lying when ſhe felt both their legs? depones, She does not remember, but ſhe thinks ſhe was lying half turned on her right ſide with her back towards them Depones, That when Miſs Woods came into the bed at firſt, ſhe lay down above Miſs Pirie, and then they took up their ſhifts, and it was after that, that Miſs Pirie moved over her leg towards the witneſs. Interrogated, How their legs were lying with reſpect to each other, after they had taken up their ſhifts, and before Miſs Pirie laid her leg out? depones, She cannot ſay, but ſhe is ſure that ſhe felt both their legs. Interrogated, At what particular moment it was that ſhe felt Miſs Woods' leg? depones, It was juſt at the time that they took up their ſhifts, and it was then that ſhe felt their ſkins. Interrogated, and deſired to deſcribe exactly how they were lying when the witneſs felt Miſs Woods' leg? depones, That Miſs Woods was lying directly above Miſs Pirie. Interrogated, Was her leg directly above Miſs Pirie's, or how was it lying? depones, That ſhe felt all Miſs Pirie's leg, but only a part of Miſs Woods, and ſhe thinks it was above the knee. Interrogated, Was it only above the knee that ſhe felt Miſs Woods' leg? depones, That it was above the knee that ſhe felt it, and ſhe does not think ſhe felt any more. Interrogated, Did the witneſs feel any other part of Miſs Woods' leg than ſhe has juſt mentioned, at any time after they pulled up their ſhifts? depones, That ſhe did not, becauſe, immediately afterwards, ſhe lay as far from them as ſhe could, and ſhe felt no more of them till after ſhe had aſked Miſs Pirie what was ſhaking the bed, and when Miſs Pirie anſwered, 'Nothing;' ſhe then drew up her leg and touched the witneſs. Interrogated, Does the witneſs ſtill incline to think that Miſs Woods' leg was within Miſs Pirie's when ſhe felt them both? depones, She does not. Interrogated Did ſhe feel any part of Miſs Woods' leg below Miſs Pirie's leg, or was what ſhe felt of Miſs Woods' leg above Miſs Pirie's leg. Depones, She thought the one which was below was Miſs Pirie's leg, and that the one which was above was Miſs Woods'. Interrogated, If at any time ſhe ſtretched out her leg or foot, ſo as to put any part of either under Miſs Pirie's? depones, She does not remember that ſhe did. Interrogated, Do you know whether Miſs Pirie had any rheumatic complaint during the ſpace between the end of the holidays and the breaking up of the ſchool? depones, She had the rheumatiſm in her arms. Interrogated, Did the rheumatiſm affect Miſs Pirie's back? depones, She never heard her ſay ſo. Interrogated, Does ſhe know whether

A B C D E F G H I

ther Miſs Pirie uſed to have any part of her body rubbed for the rheumatiſm? depones, She does not know; but once when Miſs Stirling was ill, and got ſomething from the doctor to rub her back with, Miſs Pirie ſaid ſhe had got a pain in her back alſo, and aſked her for ſome of the ſame ſtuff, but ſhe does not know of her being rubbed with it. Interrogated, and deſired to ſtate as diſtinctly and particularly as ſhe can, what paſſed on the firſt of the four occaſions above deponed to, when ſhe is ſure that Miſs Woods came to Miſs Pirie's bed? depones, That ſhe remembers the times, and can tell all that happened, but cannot diſtinguiſh the order in which they ſucceeded one another. The Court then adjourned till Monday the 25th day of March, at ten o'clock, &c.

Edinburgh, 25th March 1811.

In preſence of the following Judges: The Right Honourable Lord JUSTICE-CLERK, and Lords MEADOWBANK, ROBERTSON and NEWTON, and of the Counſel and Agents for the parties,

Compeared Miſs JANE CUMMING, a witneſs formerly ſworn and examined in this cauſe; and her former examination being read over to her, the witneſs, that on the 3d line from the bottom of the 70th page, after the word 'ſhifts,' theſe words ſhould be added: 'And it was then that the witneſs felt their legs, 'as deponed to.' And the witneſs farther adds, that although, when ſhe was laſt under examination, ſhe only recollected four particular times when Miſs Woods came to Miſs Pirie's bed, yet, upon recollection ſince, ſhe thinks ſhe remembers five times. And being further interrogated for the purſuers, At how many of theſe times does ſhe now ſay that Miſs Woods lay above Miſs Pirie? depones, She thinks four times, becauſe ſhe is not certain that ſhe lay above her one of the times. Interrogated, and deſired to ſtate diſtinctly, in ſo far as ſhe can, all that happened at each of theſe times, excepting the laſt time, of which ſhe has already given a particular account.—The queſtion was objected for the defender, and the objection was ſuſtained by the Court, as too ſimilar to a former queſtion, and occaſioning unneceſſary repetition.—Interrogated, and deſired to mention all that paſſed between Miſs Woods and Miſs Pirie on the occaſion when ſhe heard Miſs Piric ſay, 'O you are hurting me,' depones, That ſhe does not recollect

any

any thing more at preſent, except that ſhe felt one of them move, A
which ſhe thinks was Miſs Woods, and thereafter Miſs Woods
went away; but ſhe does not think that Miſs Woods was moving
at the time Miſs Pirie made that obſervation, and ſhe thinks it
was Miſs Woods who was lying above Miſs Pirie at the time of
that obſervation, becauſe it was Miſs Woods who went away. B
Interrogated, and deſired to mention all that happened on the
occaſion when Miſs Woods aſked Miſs Pirie if ſhe was hurting her,
depones, Nothing, but that ſhe felt one of them move, which ſhe
thinks was Miſs Woods, who afterwards went away; and for the
ſame reaſon ſhe thinks Miſs Woods was then lying uppermoſt. Alſo C
interrogated, and deſired to mention all that happened on the oc-
caſion when Miſs Pirie ſaid, 'You are in the wrong place,' &c. as
deponed to on page 39. depones, That ſhe remembers nothing,
but that Miſs Woods moved after this converſation had gone on,
and ſoon afterwards went away. Interrogated, and deſired to D
mention all that paſſed on the night when ſhe heard Miſs Woods
ſay, 'Now Jane, will you promiſe me one thing,' &c. as deponed
to pages 40. and 41. depones, That ſhe does not remember any-
thing more, and that ſhe has not ſaid, and does not think they
were in bed together that night, becauſe ſhe did not perceive them.
Interrogated, and deſired to mention all that paſſed on any of the
occaſions when ſhe heard Miſs Woods ſay to Miſs Pirie, 'Good
'night, darling, I think I have put you in the way,' &c. as de-
poned to on page 44. depones, That ſhe remembers on ſome of
theſe occaſions there was whiſpering and kiſſing, but ſhe does not F
remember if there was upon all the occaſions. Interrogated, How
many of theſe nights were there when Miſs Woods ſaid to Miſs
Pirie, 'I think I have put you on the way,' &c.? depones, She
thinks there were certainly more than two, but ſhe does not re-
member how many. Interrogated by the Lord Juſtice-Clerk, G
Whether, upon any of the occaſions when the purſuers were in
bed together, as above deponed to, ſhe felt any thing wet in the
bed? depones, She did not. Interrogated, If, the next morning
after theſe occaſions, ſhe ever perceived any ſtain upon the ſheets?
depones, She did not. Interrogated by Lord Meadowbank, Whe- H
ther any of theſe occaſions which ſhe has recently deponed to, or
if any of them, which, happened during the time when ſhe was
doubtful what to underſtand the purſuers were doing together?
depones, That ſhe did not become quite certain till after the laſt
occaſion of all, when Miſs Pirie aſked Miſs Woods to come into I
bed, as above deponed to, and ſhe declined for fear of wakening
Miſs

Did not mention conversations to Mrs Munro

A Miſs Stirling, and of courſe all the previous occaſions happened while the witneſs was more or leſs doubtful. Interrogated, What was her reaſon for not mentioning theſe converſations to Miſs Munro which ſhe has deponed to, and which had affected her own mind ſo ſtrongly? depones, Becauſe ſhe was aſhamed, and never B wiſhed to ſpeak of it. Interrogated, Whether Miſs Munro, when ſhe told her what ſhe had obſerved, mentioned to her any converſations that ſhe had ever heard, or whether the witneſs inquired if ſhe had overheard any? depones, That ſhe did not aſk Miſs Munro, and that Miſs Munro never told her more than is already C deponed to. Interrogated for the purſuers, Was Miſs Woods breathing high on all the five occaſions deponed to? depones, She does not remember, but ſhe knows on the laſt one ſhe was. Interrogated. Was Miſs Pirie breathing high on any of the five occaſions? depones, She does not think it. Interrogated, Are you D ſure that ſhe was not breathing high? depones, She cannot be certain, but ſhe does not think ſo. Interrogated, Did you write any letters to your friends from the time of the holidays till you left the ſchool? depones, She does not remember. Interrogated, Was it a rule of the ſchool that you ſhould not write letters to E your friends without ſhewing them to the miſtreſſes? depones, It was during the time of the ſchool, but during the holidays ſhe had liberty to write letters without ſhewing them; and, upon recollection, depones, She did write a letter to one of her aunts after the holidays, but it was not ſent, and her aunt did not get it till F ſhe came to town. Specially interrogated, Did ſhe write any letters to her friends from Mrs Forbes's? depones, She did, but ſhe does not remember if it was after the holidays or not. but ſhe remembers diſtinctly writing one from Mrs Forbes's before the holidays began. Interrogated, Did you complain of the conduct G of the purſuers in any letters to your friends, written after the holidays? depones, She never complained of them in any of her letters. Interrogated, When did you firſt mention to any of your friends out of the ſchool that you ſuſpected or believed that the purſuers had been conducting themſelves indecently? depones, It H was ſome days after her grandmamma had come home. Interrogated, To whom did the witneſs mention it? depones, She was going to tell it to one of her aunts, but ſhe would not hear it, and ſaid, if ſhe had any thing bad to tell that ſhe would not hear it, but that the witneſs would not go to ſchool that night, and might tell it next morning to her grandmamma. Interrogated, Did you underſtand that Mrs Forbes had the charge of you in your grand-

mamma's

mamma's abſence? depones, That ſhe does not know what charge Mrs Forbes had over her, but ſhe told the witneſs juſt to conſider her houſe as her home until her grandmamma returned. Interrogated, Why did ſhe not tell what had happened to Mrs Forbes? depones, She was nurſing at the time, and ſhe thought, for another thing, that ſhe would not underſtand what the witneſs meant. Interrogated, When did ſhe firſt tell what had happened to Lady Cumming? depones, On the day after ſhe was going to tell it to her aunt. Interrogated, Which of her aunts was ſhe going to tell it to? depones, It was to Miſs Sophia. Interrogated, What did Lady Cumming deſire her to do after ſhe told her the ſtory? depones, That at firſt Lady Cumming was againſt her going back to the ſchool, but afterwards ſaid ſhe might go back. Interrogated, Did you go back? depones, Yes, upon the ſame day ſhe told it to Lady Cumming, but ſhe does not remember what day of the week it was. Interrogated, On what day of the week did you leave the ſchool? depones, She does not remember. Interrogated, Did ſhe ever meet with the maid Charlotte after ſhe left ſchool? depones, She did; and, as ſhe thinks, the next day, but ſhe is not quite ſure. Interrogated, Who were with the witneſs? depones, One of her couſins, the Miſs Dunbars. Interrogated, What did ſhe ſay to Charlotte? depones, She aſked her how ſhe did, and ſhe aſked her, as ſhe thinks, if Miſs Stirling and Miſs Munro were gone. Interrogated, What did Charlotte ſay? depones, She does not remember if ſhe told the witneſs theſe young ladies were gone, but ſhe told her that Mrs Kennedy had come and taken away Miſs Hunter in a great hurry, and that there was a coach at the door waiting for the Miſs Fraſers; and then ſhe aſked the witneſs what ſhe was taken away for, and the witneſs thinks that ſhe herſelf replied, but is not quite ſure, that it was about the beds. Depones, That Charlotte looked ſurprized, and ſaid, 'Don't mention my name, and don't tell that you ſaw me,' or words to that effect. Interrogated, Did the witneſs tell Charlotte that ſhe had been taken away before Charlotte aſked her what ſhe was taken away for? depones, She does not remember whether ſhe did upon that occaſion, but ſhe knows, that upon the day ſhe left ſchool ſhe told Charlotte ſhe did not think ſhe was coming back again. Specially interrogated, When Charlotte told the witneſs that the young ladies were taken away, as above deponed to, did the witneſs expreſs any joy on the occaſion? depones, She does not remember if ſhe did, but if ſhe did at all, it was becauſe Miſs Munro was taken away. Specially interrogated, Did ſhe clap her hands, turn round

A

and ſay to Miſs Dunbar, 'Do you hear, Margaret, they are all
A 'gone from the ſchool?' depones, She does not remember doing it, but ſhe will not ſay that ſhe did not do it. Interrogated, Did ſhe feel any joy on the occaſion of the other young ladies being taken away? depones, That ſhe remembers that ſhe felt very hap-
B py, but it was becauſe Miſs Munro was taken away. Interrogated, Did you behave with reſpect to Miſs Woods as long as you continued at the ſchool? depones, She did, as far as ſhe knows. Interrogated, Did ſhe behave with kindneſs and affection to Miſs Woods as long as ſhe continued at the ſchool? depones, She was
C very fond of her. Interrogated, Was ſhe very fond of her to the laſt? depones, She was always fond of her, unleſs when ſhe thought of that. Interrogated, When ſhe left the ſchool for the laſt time, did ſhe take Miſs Woods by the hand and kiſs her? depones, She
D did. Interrogated, Did ſhe know at this time that ſhe was leaving the ſchool not to return? depones, She was not quite ſure. Interrogated, Did Miſs Woods know of any intention to take you from the ſchool at this time? depones, She did not. Interrogated, Did She ever aſk to ſleep with Miſs Woods? depones, She has; and ſhe does not recollect the time, but ſhe thinks it was on one of the days when Miſs Munro went home to ſleep. Interrogated, Did Miſs Woods ever complain of your officious attention in handing her bread, tea, &c., when ſhe did not want them. Depones, She remembers Miſs Woods complained of her handing her bread, but not tea. Interrogated, Did Miſs Woods frequently complain
F of the witneſs's officious attentions? depones, That ſhe does not remember that, but Miſs Woods uſed often to ſay, that the witneſs was very ſelfiſh. Interrogated, Was you anxious to be next Miſs Woods in walking? depones, Yes, when ſhe had not her couſins to walk with. Interrogated by Lord Robertſon, Was it conſi-
G dered as a mark of honour among the ſcholars, to be next the miſtreſs in walking? depones, No; ſhe aſked it out of affection for Miſs Woods. Interrogated, Was ſhe anxious to be next Miſs Woods in walking, even when her couſins were out walking at the ſame time? depones, She does not remember; but ſhe does not
H think ſo. Interrogated, Did ſhe ever beſpeak Miſs Woods' arm in walking a day before hand? depones, That ſhe has ſome faint recollection of having done ſo. Interrogated, Did Miſs Woods complain of the officious attentions of the witneſs at any time or times
I recently before the witneſs left the ſchool? depones, She does not remember when ſhe did it, but ſhe knows ſhe has done it. Interrogated, Did the witneſs continue anxious to be next Miſs Woods

in

in walking, down to the time ſhe left the ſchool? depones, Yes, A
except when her couſins were with her. Interrogated, Does ſhe
recollect Miſs Woods' laſt birth-day, or does ſhe remember any
thing happening in the morning of that day? depones, She re-
members the birth-day, but does not remember any thing parti-
cular which happened in the morning. Interrogated, Did you B
go to Miſs Woods' bed-ſide on that morning? depones, That now
ſhe recollects ſhe did, and ſhe ſaw a Bible and a Prayer-book which
Miſs Woods had got from Miſs Pirie. Interrogated, Did you ſee
a note or letter written by Miſs Pirie to Miſs Woods, and given
her along with the books? depones, She does not remember. And C
being ſhewn the production, No. 30. and aſked, If ſhe had ever
ſeen it? depones, She cannot recollect that ſhe ever did, at leaſt
ſhe is certain ſhe never read it. Interrogated, Did any of the other
young ladies come to Miſs Woods' bed that morning, and ſee the
books? depones, There was nobody at the bed-ſide when the wit- D
neſs was there, for ſhe went to the bed-ſide as ſhe paſſed through
to the dreſſing-room, but when ſhe went into the dreſſing-room,
ſhe aſked ſome of the young ladies if they had ſeen the books,
and ſhe thinks ſome of them ſaid they had not. Interrogated,
Did ſhe prepare ſome card-boxes as a preſent for Lady Cumming, E
to be given upon her arrival in Edinburgh, a few days before ſhe
left ſchool? depones, That ſhe did make them, but ſhe does not
remember on what day ſhe finiſhed them, but they were not finiſh-
ed till after Lady Cumming arrived. Interrogated, What paſſed
between the witneſs and Miſs Woods relating to thoſe card-boxes? F
depones, She remembers Miſs Woods was very kind, and helped
her to finiſh them. Interrogated, Did you entreat Miſs Woods to
aſſiſt? depones, She did aſk her to do ſo. Interrogated, Did ſhe
go along with Miſs Woods to call at Biſhop Sandford's a day or
two before ſhe left the ſchool? depones, She did. Interrogated, G
Why ſhe went? depones, that the witneſs was going to Charlotte
Square at any rate. and ſhe thinks that Miſs Woods aſked her if
the witneſs would have time to go with her to Biſhop Sandford's,
and then ſhe would go with the witneſs to Charlotte Square. In-
terrogated, Was ſhe acquainted in Biſhop Sandford's? depones, H
That ſhe knew the Miſs Sandfords, and had drunk tea there one
night. Interrogated, Did ſhe remain in the lobby till Miſs Woods
paid her viſit? depones, She did. Interrogated, was ſhe on one
occaſion engaged to dine with Mrs Forbes, or was ſhe aſked to
dine with Mrs Forbes, and did ſhe refuſe to go to dine with her on I
account of a difference betwixt the witneſs and Miſs Woods?
depones,

A depones, That ſhe remembers on one occaſion being aſked to tea at Mrs Forbes's, and ſhe had aſked leave at Miſs Pirie, and all the girls knew of it, but ſhe had forgot to mention it to Miſs Woods; and upon coming down ſtairs in her bonnet, and going to bid Miſs Woods 'good bye,' Miſs Woods aſked her where ſhe was going;
B and upon being told, Miſs Woods deſired the witneſs would always tell her, and was very angry with her, and that the witneſs explained to Miſs Woods ſhe had told Miſs Pirie, and had only forgot to tell Miſs Woods. Depones, That ſeeing Miſs Woods ſo angry, the witneſs went up ſtairs, and put off her things; but when
C ſhe came came down again, Miſs Woods made her go to Mrs Forbes's. Interrogated, Did ſhe on any occaſion ſend Miſs Margaret Dunbar to beg that Miſs Woods would be reconciled to the witneſs before the witneſs would go to dine with Mrs Forbes? depones, She remembers once, but ſhe does not remember the time
D deſiring Miſs Margaret Dunbar to do ſo: That ſhe does not know if ſhe did ſo, and ſhe is not quite ſure whether Miſs Woods was reconciled to her before ſhe went. Interrogated, Does ſhe recollect what had diſpleaſed Miſs Woods upon that occaſion. Depones, That ſhe thinks, upon the occaſion ſhe is ſpeaking of, it
E was about her French Catechiſm. Interrogated, during the holidays, Did ſhe take a walk on the Caſtlehill on a Sunday evening, and without the knowledge of the purſuers? depones, That ſhe did. Interrogated, Did the purſuers find fault with the witneſs? depones, They did. Interrogated, Did they tell the witneſs that ſhe
F would never ſleep another night at Drumſheugh, if the ſame thing happened again? depones, She does not remember. Interrogated, Does ſhe recollect a windy night in October, when Miſs Pirie was out all night? depones, That ſhe remembers ſomething of it, but not diſtinctly. Interrogated, Was ſhe told Miſs Pirie was in
G James's Square that night, and could not return for the violence of the wind? depones, She thinks ſhe does remember being told ſo, but not very diſtinctly. Interrogated, Did the witneſs ſleep by herſelf that night? depones, She does not remember ſl-eping with any one after ſhe went to Drumſheugh, unleſs with Miſs Pirie.
H Interrogated, Were you exceſſively frightened that night? depones, She remembers one night being exceſſively frightened, and ſhe rather thinks it was that night. Interrogated, Was Miſs Stirling awake that night? depones, She does not remember. Interrogated, Did the witneſs tap on the partition-wall to Miſs Woods
I to come to her? depones, She does not remember. Interrogated, Did Miſs Woods come to you from her aunt's room? depones, She does

does not remember. Interrogated, Does ſhe remember nothing of Miſs Woods ſtaying with her on account of her fears that night? depones, She does not. Interrogated, Did ſhe always ſit next Miſs Woods at work? depones, Not always, but ſometimes, when ſhe could ſhe did. Interrogated, Did ſhe always expreſs a deſire to ſit next her at work? depones, Not always, but frequently. Interrogated, Was that on account of the preference ſhe gave to Miſs Woods before Miſs Pirie? depones, It was. Interrogated, Does ſhe remember a quarrel ſhe had with Miſs Cunynghame? depones, She does, and it was about the decorum-card; and the time of it is marked in the book ſhe has produced. Interrogated, Did Miſs Woods turn the witneſs out of the room that evening for behaving ill to Miſs Cunynghame? depones, That ſhe did. Interrogated, Did the witneſs come back, deſiring to be permitted to ſpeak to Miſs Cunynghame? depones, That ſhe did. Interrogated, Did Miſs Woods tell the witneſs that Miſs Cunynghame was too good to ſpeak to her, and order her again to leave the room? depones, That ſhe did. Interrogated, Had the witneſs a diſpute with Miſs Edgar about the decorum-card? depones, Very often. Interrogated, Does ſhe recollect one occaſion in October, in which Miſs Pirie took Miſs Edgar's part in ſuch a diſpute? depones, She does not. Interrogated, Does ſhe recollect of being provoked at Miſs Pirie in ſuch a diſpute? depones, That as ſhe does not recollect the diſpute at all, ſhe cannot recollect being ſo provoked. Interrogated, Did the witneſs ever ſpeak to Miſs Stirling with reſpect to ſuch a diſpute, and did Miſs Stirling tell her on that occaſion, that if the witneſs was ſpeaking truth, ſhe need not care who heard her? depones, That ſhe remembers Miſs Stirling ſaying to her, that if ſhe was ſpeaking truth, ſhe need not care who heard her; but ſhe does not recollect to what quarrel or other circumſtance ſhe alluded; and the witneſs thinks ſhe anſwered, 'Well, I don't care who hears me.' Interrogated, If ſhe had a diſpute with her waſher-woman in the beginning of November laſt? depones, That ſhe has no recollection of any quarrel with the waſher-woman; but ſhe remembers, a ſhort time before ſhe left ſchool, Miſs Pirie ſcolding her for having forgot to put ſome of her things into the dirty bag, and giving her ſome lines to get, and ſhe believes the waſher-woman was angry with her for having marked more down in her liſt than was in the bag; and ſhe thinks the circumſtance is marked in the book produced. Interrogated, Did Miſs Pirie ever cenſure her feelings or her heart, in preſence of the other girls? depones,

A That ſhe does not remember any ſuch thing before the girls, but ſhe remembers her once ſo finding fault, and ſhe thinks it was during the holidays. Interrogated, Did Miſs Pirie uſually ſleep with a bedgown, and wrapper and petticoat on? depones, That ſhe did. Interrogated, Does the witneſs recollect the time when a
B feather-bed was put upon Miſs Pirie's bed? depones, She does not remember the time, but there was a feather-bed put on. Interrogated, Was the feather-bed continued after being put in till the witneſs left the ſchool? depones, She is not quite ſure, but ſhe rather thinks it was. Interrogated, before the feather-bed was
C uſed, Was there a bolſter laid betwixt you and Miſs Pirie? depones, That ſhe has no recollection of a bolſter being laid between them at all. Interrogated for the defender, depones, That ſhe had received the communion at Biſhop Sandford's Chapel before calling at his houſe with Miſs Woods, as deponed to. Interroga-
D ted further, depones, That ſhe had converſation with Biſhop Sandford before taking the communion, and Miſs Woods attended her, and took her there, and this was before the holidays. And further interrogated for the defender, depones, That Miſs Margaret Dunbar and Mr John Forbes's ſon were with her on the Caſtle-
E hill on the day deponed to, and the witneſs was the oldeſt perſon in the company, and ſhe had dined that day at Mr Forbes's. Interrogated by Lord Meadowbank, Whether, during the ſummer holidays, there was day-light in the bed-chamber where the wit-
F neſs ſlept, for any conſiderable time before they roſe in the morning, ſo that people could ſee what paſſed in the room? depones, That there was day-light in the room. Interrogated, Whether when ſhe was diſturbed with the particular noiſe and ſhakings in the bed in which the purſuers ſlept, near her's, ſhe ſaw what the purſuers were doing in bed together? depones, No: That their cur-
G tain was down, and ſhe could not have ſeen, unleſs ſhe had gone to their bed and opened the curtain. Depones, That no other perſon then ſlept in that room excepting the purſuers and the witneſs. Interrogated, Whether on thoſe occaſions when Miſs Woods came into bed with Miſs Pirie, while the witneſs was ſleeping with her, ſhe
H perceived any puffs of air come up from between the bed-clothes when Miſs Woods was in motion above Miſs Pirie? depones, She did not. Interrogated, Did ſhe obſerve whether Miſs Pirie made any correſponding motions to Miſs Woods' motions, or lay quite ſtill? depones, That ſhe does not think that Miſs Pirie moved.
I Interrogated, What was the witneſs's particular reaſon for rejoic-

ing

ing that Miſs Munro had left the ſchool? deponcs, It was because Miſs Munro generally ſlept with Miſs Woods.

Upon the depoſition being read over to the witneſs, ſhe deſired it might be added to it, that when on a former diet, ſhe ſaid ſhe had obſerved the purſuers in their night ſhifts, ſhe meant their night things in general, &c.

The Court then adjourned till to-morrow, the 26th current, at the ſame place and hour.

Edinburgh, 26*th March* 1811.

In preſence of the following Judges: The Right Honourable Lord JUSTICE-CLERK, Lords MEADOWBANK, ROBERTSON and NEWTON.

The defender offered Miſs Eliza Chriſtian Graham Stirling as a witneſs; whereupon Mr Clerk, as counſel for the purſuers, ſtated as in a minute apart, and an anſwer was made by Mr Erſkine; and the Judges having deliberated on the matter, find, That Miſs Stirling, who, as far as yet appears, was only accidentally in the room while the converſation is alleged to have paſſed between Miſs Cumming and Miſs Munro, and Charlotte the maid, is not the beſt evidence of the part Charlotte took in that converſation, and the true import of it, as long as the evidence of Charlotte herſelf may be obtained; and therefore find, that ſhe cannot be examined on this point *in boc ſtatu*.

Thereafter the defender offered Miſs Margaret Dunbar, daughter of Sir Archibald Dunbar of Northfield, Baronet, as a witneſs; againſt whoſe examination an objection was ſtated by Mr Clerk for the purſuers, and an anſwer was made by Mr Erſkine for the defender; which objection and anſwer the Judges directed to be reduced into writing, and lodged with the clerk; and the Judges having deliberated on the ſame, find, That the ſubject matter of the action being an alleged publication of a ſlanderous ſtory to the injury of the purſuers, and the ſpecial defence ſtated againſt that action being a juſtification founded on the truth of the facts ſo charged to have been publiſhed by the defender, do neither of them ariſe from or reſult into facts and circumſtances which happened *intra familiam* of the defender, and that there is no room for an exception from the ordinary rules of evidence in proving the defence, and therefore ſuſtain the objection to the admiſſibility of Miſs Margaret Dunbar, as being the legitimate granddaughter of the defender.

The

A The Judges then adjourned till to-morrow at the ſame place and hour.

Edinburgh, 27th March 1811.

In preſence of the following Judges: The Right Honourable Lord JUSTICE-CLERK, Lords MEADOWBANK, ROBERTSON and
B NEWTON,

Compeared Miſs JANE STEVENSON, daughter of the deceaſed Dr Alexander Stevenſon, phyſician in Glaſgow, unmarried, aged forty, who being ſolemnly ſworn, purged of malice and par-
C rial counſel, examined and interrogated, depones, That ſhe is acquainted with Miſs Janet Munro, a witneſs formerly examined in this cauſe, daughter of George Munro, Eſq; and has known her all her life. Depones, That Miſs Munro has occaſionally lived in the witneſs's houſe, and ſhe was about nine years old when
D ſhe firſt came to the witneſs's houſe, and ſhe ſtaid with her at that time about ſix months, and twice after that ſhe ſtaid with the witneſs about ſix or ſeven months at each time. Depones, That ſhe remembers the time when Miſs Munro was at the ſchool kept by the purſuers, and ſhe remembers her leaving the ſchool, which
E was upon the 15th of November laſt, and on a Wedneſday. Depones, That on the day on which ſhe left the ſchool, ſhe came to the witneſs, and communicated to her ſome very particular circumſtances that had happened at the ſchool, and theſe circumſtances related to improper conduct on the part of the purſuers.
F Interrogated, Did the witneſs, in conſequence of this communication, take any meaſures to appriſe the defender, either directly, or by means of any one elſe, of what Miſs Munro had told her? depones, That ſhe did, through the medium of Mrs Forbes. Depones, That ſhe communicated to Mrs Forbes the full ſubſtance
G of what Miſs Munro had told her. Depones, That Miſs Munro is a little deaf, more particularly in one ear, but ſometimes in both. Depones, That ſhe made the communication deponed to, to Mrs Forbes, on the day after her receiving it from Miſs Munro, and ſhe thinks about two or three o'clock of that day, which
H was Thurſday. Interrogated for the purſuers, depones, That ſhe does not recollect in which ear Miſs Munro is moſt deaf. All which is truth, &c. And being further interrogated for the purſuers, depones, That ſhe went with Miſs Munro to make a call at the ſchool at Drumſheugh on the Friday before Miſs Munro left
I it. Depones, That the witneſs went with the intention of ſeeing one or other of the purſuers, and ſhe did ſee Miſs Pirie. Depones,

That

That ſhe communicated to Miſs Pirie certain circumſtances re- A
garding the health of Miſs Munro, which Miſs Munro had com-
municated to the witneſs, from the peculiar intimacy that ſubſiſt-
ed between them. Depones, That the witneſs did not at that
time, either feel or expreſs any diſſatisfaction with the ſchool, nor
had Miſs Munro expreſſed any to the witneſs. Depones, That B
ſhe made the communication to Miſs Pirie above deponed to, with
a view of Miſs Munro's continuing to reſide at the ſchool.
Depones, That ſhe does not remember Miſs Pirie aſking her any
queſtions as to the diet or exerciſe proper for Miſs Munro, but the
witneſs remembers that ſhe herſelf mentioned to Miſs Pirie that C
ſhe wiſhed Miſs Munro to have more exerciſe. Depones, That at
this time the witneſs thought that Miſs Munro ſeemed to under-
ſtand that ſhe was to continue at ſchool. Depones, That ſhe
thinks Miſs Iſabella Murdoch came to Edinburgh with Mr Mun-
ro's family, but ſhe is not quite certain, as ſhe was not then herſelf D
in Edinburgh: That the witneſs came herſelf to Edinburgh about
the 21ſt or 22d of October, and Miſs Iſabella Murdoch was then
in town, and remained as ſhe thinks till about the 21ſt or 22d of
November. Depones, That ſhe paid a viſit to the ſchool at
Drumſheugh, in company with Miſs Murdoch on one of their E
dancing days, which ſhe thinks was about the 24th or 25th of
October, at leaſt it was a few days after the witneſs came to town.
Depones, That when Miſs Munro communicated the circumſtance
above alluded to, to the witneſs on the Wedneſday, it was after
Miſs Munro had been taken from the ſchool. Depones, That F
ſhe had had a ſlight hint of theſe circumſtances from Mrs For-
bes before Miſs Munro communicated them to the witneſs. In-
terrogated by Lord Newton, depones, That ſhe underſtood Miſs
Munro had been taken from the ſchool in conſequence of ſome
impropricties in the conduct of the purſuers. Depones, That ſhe G
underſtood that Miſs Munro had not complained to her father,
but that ſome perſon had told him to take his daughter from
ſchool. And being interrogated who that perſon was? depones,
It was Mr James Hope. On the depoſition being read over to the
witneſs, ſhe depones, That ſhe had come to Mr Walker's at Dalry, H
about a week before ſhe came to her own houſe, as above deponed
to; and on recollection, ſhe rather thinks it was from Dalry that
ſhe made the viſit to the ſchool on the dancing day. Depones,
That the time of her communication with Mrs Forbes, was after
the time when ſhe knew that Mr Munro had gone to take away I
his daughter from the ſchool, and ſhe flew to Mrs Forbes in an

A agony to know what it was for. Depones, That from the time when ſhe came to Dalry, to the time when Miſs Munro was taken away, ſhe viſited the ſchool twice, beſides the two times particularly deponed to, &c.

B Thereafter compeared JAMES HOPE, writer to the Signet, married, aged forty and upwards, who being ſolemnly ſworn, purged of malice and partial counſel, examined and interrogated, depones, That one day when he was ſitting in his own room, he remembers Mr John Forbes coming in and telling him, he underſtood that a C particular friend of the witneſs's ſiſter was at the purſuers' ſchool at Drumſheugh: That his friend Lady Cumming Gordon, had alſo ſome very near connections at that ſchool, and that ſhe had found it incumbent upon her to take them away, and he repreſented ſtrongly to the witneſs the propriety of his adviſing the D relations of his ſiſter's young friend to take her away alſo: That the witneſs being a good deal ſtruck with this communication, aſked Mr Forbes what was the matter, and Mr Forbes anſwered, I cannot, or I will not tell you, but let the young lady be aſked, and ſhe will be able to aſſign ſufficient reaſons: That the witneſs, E after conſidering what he ſhould do, did accordingly go to Mr Munro, and communicated to him the converſation Mr Forbes had held: That Mr Munro anxiouſly inquired what was the matter, and the witneſs anſwered he did not know any thing more than he had told him, but 'go for your daughter, and bring her F 'home as if to dine with you, and afterwards you can ſend her 'back again, if it ſhould appear proper.' All which is truth, &c.

Thereafter compeared CHARLOTTE WHIFFIN, ſervant to the purſuers, unmarried, aged nineteen; who being ſolemnly ſworn, G purged of malice and partial counſel, examined and interrogated, depones, That ſhe has been in the ſervice of the purſuers ſince the 16th of May laſt. Depones, That ſhe knows Miſs Munro, Miſs Cumming and Miſs Stirling, who were boarders at the purſuers' ſchool. Interrogated, If at any time ſhe heard thoſe H young ladies, or any of them, converſe or ſay any thing with regard to what Miſs Cumming or Miſs Munro had taken notice of in the conduct of the purſuers towards each other in their reſpective beds in the night-time, or early in the morning, and did you then take any part in the converſation, or did you relate any I thing to them of what you had ſeen or knew?—To which interrogatory an objection was ſtated by Mr Clerk for the purſuers, and

and an anſwer was made by Mr Erſkine for the defender, which the Judges appointed to be reduced into writing and lodged with the clerk; and the Judges having deliberated on the objection and anſwers, in reſpect it is judicially admitted by the counſel for the defender that they do not mean to examine the witneſs as to what ſhe really ſaw or knew as to the alleged impropriety of conduct in the purſuers, but only as to what ſhe told the ſcholars, whether true or falſe, find, that the witneſs ought not to be examined as to what ſhe ſaid, without previouſly examining her as to what ſhe ſaw or knew, and therefore ſuſtain the objection, and refuſe to put the queſtion; whereupon Erſkine for the defender ſtated, as upon a paper apart, and the witneſs being again called in, being interrogated, Whether at any time ſhe obſerved any thing in the conduct of the purſuers towards each other that appeared to her extraordinary or indecent, or that led the witneſs to be ſurpriſed at what ſhe ſaw? depones, That ſhe did not. Interrogated, Whether ſhe ever ſaw Miſs Woods and Miſs Pirrie kiſs each other, or ſhew any uncommon marks of affection for each other? depones, She does not recollect that ever ſhe ſaw any ſuch thing. Interrogated, If ſhe ever ſaw Miſs Woods and Miſs Pirie lying together on a ſofa or ſettee in the drawing-room? depones, That ſhe never did. Interrogated, If ſhe ever ſaw them lying together in the bed in the dreſſing-room? depones, That ſhe did not. Interrogated, If, upon any occaſion ſhe went to the drawing-room in order to ſpeak to Miſs Pirie or Miſs Woods, and found the drawing-room door locked or bolted when Miſs Pirie and Miſs Woods were in the drawing-room together? depones, She does not recollect ever going to the room and finding the doors bolted. Interrogated, If ſhe ever obſerved any quarelling, diſpute or high words between the purſuers? depones, She has ſeen them diſpute between themſelves. Interrogated, If at any time ſhe heard Miſs Munro, Miſs Cumming, and Miſs Stirling, or any of them, converſe or ſay any thing with regard to what Miſs Cumming or Miſs Munro had taken notice of in the conduct of the purſuers towards each other in their reſpective beds in the night-time or early in the morning, and did ſhe then take any part in the converſation, or did ſhe relate any thing to them of what ſhe had ſeen or knew? depones, She has ſeen theſe three ladies together, and converſing together, but does not know what it was concerning, and ſhe never told them that ſhe had ſeen or obſerved any thing improper in the purſuers' conduct. Interrogated, Did ſhe ever tell to any of the other ſcholars, or to any other, that ſhe had obſerved any thing

A thing improper in the purſuers' conduct? depones, That ſhe did not. Interrogated, If ſhe remembers Miſs Woods' birth-day in October laſt? depones, She does. Interrogated, Does ſhe remember any thing in the way of feſtivities, diſguiſing or maſquerading on the occaſion, in the houſe? depones, Nothing very par-
B ticular; the other ſervant put on ſome clothes, and ſhe and the witneſs went up ſtairs together, by way of diverting the young ladies, but they did not ſtay long. Interrogated, If there was a girl ſerving in the houſe of the name of Nancy? depones, There was, and that ſhe is the fellow-ſervant above mentioned. Inter-
C rogated? depones, That Nancy that night had mens clothes over her own clothes. Interrogated, Was there any thing particular in Nancy's ſituation at that time? depones, She was with child, but it could not be noticed. Interrogated, Whether ſhe means that it could not be noticed when ſhe had mens clothes above
D her own, or whether it could not be noticed when ſhe was in her ordinary dreſs? depones, She thinks ſome people might, and ſome might not notice it in her ordinary dreſs; but it was leſs obſervable when ſhe had on the mens' clothes. Interrogated for the purſuers, depones, That when ſhe entered to the purſuers'
E ſervice, ſhe engaged for ſix months, and ſhe engaged to ſerve them for other ſix months about a week before the firſt ſix months expired. Depones, That a ſervant called Bell Campbell came at Martinmas laſt in the room of Nancy, and that ſhe aſked the witneſs at the time ſhe was hired, if it was a good place or not. De-
F pones, That ſhe made this inquiry the day after ſhe was hired, and the witneſs does not remember the particulars. Interrogated, depones, That the witneſs ſaid to Bell Campbell it was a very good place, and that the witneſs had been very comfortable ever ſince ſhe was in it. Depones, It was her duty to waken the young
G ladies in the morning, which ſhe did at half paſt ſix or a quarter before ſeven, according to the ſeaſon of the year. Depones, It was alſo her buſineſs to do up the ſchool-room in the morning, and that the ſcholars came into the ſchool-room juſt as they were ready, by two or three at a time, but generally all of them with-
H in five minutes of each other. Interrogated, depones, Prayers were the firſt thing done in the ſchool after they met, and that either ſhe or her fellow-ſervant attended, excepting upon waſhing-day. Depones, That the ſcholars continued in the ſchool-room till breakfaſt time, except that ſometimes of a fine morning, they
I went out to the garden. Interrogated, depones, That they continued in the ſchool-room after breakfaſt till about twelve o'clock,

when

when they went out to walk. Interrogated, depones, That when they returned from their walk, they dined in the ſchool-room, and ſometimes walked in an afternoon in good weather, and when they did not walk, they continued in the ſchool-room till tea-time. Depones, That from tea-time they continued in the ſchool-room till about eight o'clock, and then there was prayers. Depones, That B
Miſs Pirie read prayers one week and Miſs Woods the next; and that one or other of the purſuers was always in the ſchool-room with the young ladies the whole day. Interrogated, depones, That the purſuers were very attentive to the conduct and behaviour of the young ladies. Depones, That after evening prayers, C
the young ladies, except Miſs Stirling, went to bed without ſupper; but Miſs Stirling had ſome ſupper up ſtairs. Depones, That Miſs Pirie ſupt in the ſchool-room, but Miſs Woods ſupt with her aunt in her aunt's room up ſtairs. Interrogated, depones, She recollects Miſs Cumming leaving the ſchool, and when ſhe went D
away, the witneſs rather underſtood that ſhe had been coming back the ſame as uſual, at leaſt ſhe ſaid nothing to the contrary. Depones, All the other ſcholars were taken away ſoon after Miſs Cumming. Interrogated, At the time the ſcholars were taken away, did ſhe know what the cauſe was? depones, That ſhe did F
not, and that ſhe heard no ſurmiſe of it, but rather thought when they were taken away ſo many of them together, that they were going to ſome ball or entertainment. Interrogated, Did ſhe at that time hear it ſurmiſed that the purſuers had failed in their circumſtances? depones, That that was the firſt reaſon ſhe heard for F
the ſcholars being taken away. Interrogated, If ſhortly after this, ſhe recollects meeting Miſs Cumming in Charlotte Square; and deſired to ſtate what paſſed on that occaſion? depones, That ſhe did ſee Miſs Cumming in Charlotte Square, as the witneſs was accidentally paſſing through it, and Miſs Margaret Dunbar was G
alſo with her: That they came up to the witneſs, and aſked her if all the ſcholars had left the ſchool; that the witneſs anſwered, all but two; and both the young ladies ſeemed very glad at it: and the witneſs aſked Miſs Cumming if ſhe knew what was the reaſon, and ſhe ſaid ſhe did not; and ſhe does not recollect H
that Miſs Munro's name was particularly mentioned. Interrogated, depones, She knows Miſs Pirie had a pain in her back while I
ſhe was in their ſervice, for ſhe has been employed to rub it. Interrogated, Did Miſs Pirie uſe to ſleep with a bed-gown and petticoat? depones, That ſhe uſed to ſleep with a bed-gown, but ſhe J
does not know that ſhe ever uſed to ſleep with a petticoat. Inter-

Glad at breaking up the School

rub the Servant Girls

A rogated, depones, That the witneſs with her fellow-ſervant made the beds in the morning. Interrogaed, Was there any thing particular in the bed in which Miſs Pirie and Miſs Cumming ſlept? depones, She does not remember any thing particular, only that they uſed to make it laſt, and that their reaſon for making it laſt
B was, that they uſed to throw the clothes open and let it get air, becauſe they thought that bed had a ſmell. Depones, When ſhe firſt went there, it was a mattraſs, but latterly it was a feather-bed. Depones, That when ſhe made the feather-bed in the morning, ſhe obſerved a conſiderable ſwell in the middle, indicating that the
C two perſons had ſlept at a diſtance from each other; and as far as ſhe recollects, this was always the caſe after a feather-bed was uſed, and that even before the feather-bed was uſed, ſhe could always diſcern that Miſs Pirie and Miſs Cumming had ſlept at a diſtance from each other. Interrogated, Did ſhe ever hear Nancy
D talk of having looked through the key-holes of any of the drawing-room doors, or did ſhe ever try to look through them herſelf? depones, She did neither; and depones, That there are two doors between the drawing-room and ſchool-room on different ſides of a thick wall, and that the one next the ſchool-room has a key-hole,
E and the other has not. And being interrogated, Whether the other drawing-room door leading into the paſſage has a key-hole? depones, She does not recollect, but ſhe thinks it has. Interrogated, Did ſhe ever hear Miſs Munro accuſe the purſuers of any impropriety, or ſay ſhe had obſerved any thing improper in their con-
F tract? depones, She did not. Interrogated by Lord Meadowbank, Whether ſhe ever heard Miſs Munro or Miſs Cumming complain of being diſturbed in the night by the purſuers, or of being tired for want of ſleep? depones, She does not recollect any ſuch thing. Interrogated, depones, That ſhe remembers that one night the pur-

High words in the dressing room

G ſuers had a diſpute in the dreſſing-room, and ſhe remembers high words paſſing between them. Depones, That ſhe remembers what was called the diſgrace table, and that Miſs Munro was frequently at it ſhortly before ſhe left the ſchool. Interrogated, depones, The purſuers did not know of Nancy's diſguiſing herſelf on Miſs Woods'
H birth-night until they came up ſtairs. Interrogated by Lord Meadowbank, Whether in going up the outer ſtair to the drawing-room, ſhe could ſee through the window what was going on within the room? depones, She rather thinks not, but ſhe never tried it. Interrogated, Did ſhe ever ſee in the ſchool-room Miſs Munro
I and Miſs Cumming converſing together, Miſs Stirling at ſome diſtance, and no other perſon in the room except the witneſs; and whether

whether ſhe had any converſation with them at that time, the time being ſhortly before the Martinmas? depones, She does not recollect any ſuch circumſtance; but ſhe remembers ſeeing thoſe three young ladies together in the dreſſing-room, as they were putting on their things to go out, but ſhe did not hear what they were ſaying, and had no converſation with them. Interrogated, Did ſhe ever obſerve whether Miſs Munro was a little deaf? depones, She did not. Interrogated, Did the witneſs ever expreſs to any of thoſe young ladies any diſſatisfaction at her miſtreſſes, and uſe any ſuch expreſſion, as that ſhe was a better lady than them? depones, O not at all. And upon the depoſition being read over to her, the witneſs depones, That ſhe does remember one morning Miſs Munro complaining to her that ſhe had been diſturbed by Miſs Woods making her get out of bed and bring her ſome water; and the witneſs made no other obſervation, than that ſhe wondered Miſs Woods had not rung the bell. Interrogated, depones, She does not remember when this was, but it was a conſiderable time before Miſs Munro left the ſchool, and ſhe thinks more than three weeks. Depones, That Miſs Woods was in the room when Miſs Munro ſaid ſo to the witneſs, and ſhe does not recollect if any other perſon was preſent. Depones, She is from the county of Kent.

A B C D E

The Court then adjourned till to-morrow at the ſame place, &c.

Edinburgh, 28th March 1811.

In preſence of the following Judges, the Right Honourable Lord JUSTICE-CLERK, Lords MEADOWBANK, ROBERTSON and NEWTON, F

Compeared Miſs ELIZA CHRISTIAN STIRLING, daughter of John Stirling, Eſq; of Kippenroſs, unmarried, aged ſixteen; who being ſolemnly ſworn, and purged of malice and partial counſel, examined and interrogated, depones, That ſhe was a boarder at the ſchool of the purſuers from July till November laſt, during which period ſhe was abſent from ſickneſs about three weeks, and was confined by illneſs at ſchool about ten days more: That Miſs Cumming was there before the witneſs went, and Miſs Munro came there afterwards. Depones, That one of the ſervants was called Charlotte Whiſſin. Interrogated, Whether ſhe remembers being along with Miſs Cumming and Miſs Munro, or either of them, at any time when a converſation took place relative to the conduct G H I

A conduct of the purſuers; and whether the maid Charlotte was in the room? depones, That Charlotte, the maid, talked about them ſo often, that ſhe cannot remember who was preſent. Interrogated, Does ſhe remember any thing that Charlotte, the maid, ſaid about them? depones, That ſhe ſaid once to herſelf, 'they might
B 'as well take a man at once:' That the witneſs was by herſelf when ſhe ſaid this. Interrogated, Does ſhe remember at any time of Charlotte ſaying any thing as to what ſhe had obſerved paſs on a particular occaſion in the dreſſing-room, where Miſs Woods and Miſs Pirie were at the time? depones, She remembers hearing
C ſomething about the dreſſing-room, but ſhe cannot remember whether it was Charlotte or Miſs Cumming that told it to her; and ſhe is certain, or at leaſt rather thinks, at leaſt ſhe was not preſent when Charlotte told it to Miſs Cumming. Interrogated, As the witneſs ſays that Charlotte ſpoke very often about the
D purſuers, ſhe is requeſted to ſay, if ſhe remembers any thing that Charlotte ſaid, beſides what ſhe has already depoued to? depones, She remembers ſomething of the purſuers having been ſeen by Charlotte through the key-hole of the drawing-room door? but ſhe cannot be certain whether it was Charlotte or Miſs
E Cumming that told her, but rather thinks it was Charlotte. Interrogated, If the witneſs recollects any thing elſe that came directly to herſelf from Charlotte, or from Charlotte in her hearing? depones, That ſhe recollects when the kettle was brought in at breakfaſt one morning, it being ſaid to them, that they were to
F look at the purſuers faces, and ſhe thinks this was ſaid by Charlotte, but ſhe cannot ſay. Interrogated, Whether Charlotte was preſent when they were ſo told to look at the purſuers' faces? depones, She does not know. Interrogated, As the witneſs, in anſwer to a former queſtion, mentioned ſome letter ſhe had written, ſhe is re-
G queſted to ſay what that letter was? depones, It was a letter ſtating, that what ſhe knew of this matter was not of her own knowledge, but by the information of others; and the letter was addreſſed to Miſs Jane Cumming, a former witneſs. Interrogated, If the letter which ſhe wrote as above, was in anſwer to one received by her from Miſs Cumming? depones, No, it was in an-
H ſwer to one which her mamma had received from Lady Cumming: That ſhe believes Lady Cumming's letter is in her mamma's poſſeſſion; and Mr Stirling being preſent, undertakes to ſend the letter, if extant, to the clerk; and the letter written by the witneſs to Miſs Cumming is produced by the defender's
I counſel, and marked as relative hereto. Interrogated, If the witneſs was in uſe, while ſhe was at the ſchool, of correſponding with her

her mother, and whether the letters that paſſed between them were A
ſeen by the purſuers? depones, That ſhe was in uſe of correſpond-
ing with her mother, and the correſpondence was not ſeen by the
purſuers: That ſhe believes the letters of all the other boarders
were ſeen by the purſuers, except Miſs Munro's, as to whom ſhe is
not certain; but the general rule was, that the letters ſent and re- B
ceived by the ſcholars were ſeen by the purſuers. Interrogated,
If, in any of her letters to Mrs Stirling, ſhe complained of the pur-
ſuers' conduct in any reſpect, or expreſſed any diſſatisfaction with
the ſchool? depones, That ſhe only recollects having written two
letters to her mother; and ſhe thinks ſhe did complain that one of C
her miſtreſſes was not very good tempered: That when ſhe ſaw
her mother in Edinburgh, ſhe did complain of their behaviour.
Interrogated, In what reſpect did ſhe complain of their behaviour?
depones, That ſhe complained they were extremely naſty, and if
ſhe had known how they behaved, ſhe was ſure ſhe would never D
have been ſent there. Interrogated, To what part of their beha-
viour did ſhe allude? depones, To their improper behaviour. In-
terrogated. Did the witneſs explain to Mrs Stirling in what their
improper behaviour conſiſted? depones, That ſhe did not, and in-
deed could not explain it: That her mamma aſked her if there J.
was a man in the caſe, and ſhe ſaid there was not; and then her
mamma ſaid ſhe could not underſtand it either. Interrogated by
the Lord Juſtice-Clerk, Whether ſhe made this complaint from any
thing that ſhe had herſelf obſerved in the conduct of the purſuers,
or only from the information of others? depones, Solely on the in- F
formation ſhe had received from others. Interrogated, depones,
That her mother came to town about the laſt day of Auguſt, but it
was not then ſhe made the complaint, but when ſhe came to town in
November; which Mr Stirling, who is preſent, ſtates to have been
upon the 8th. Depones, That ſhe dined with her mother on that G
day. Depones, That ſhe had heard that Lady Cumming Gordon
was expected in Edinburgh, and ſhe rather thinks ſhe arrived that
night. Depones, That after dining with her mother, ſhe returned
to ſchool at night to ſleep. Depones, That ſhe recollects having
accompanied Miſs Woods on a viſit to Miſs Erſkine in Charlotte H
Square, and ſhe thinks it was the day after her mother's arrival.
Depones, That her mother left town on Saturday or Sunday there-
after. Interrogated, If ſhe recollects where ſhe dined on that
Sunday? depones, That ſhe dined almoſt every Sunday with one
or other of her aunts, and cannot particularly recollect as to that I
Sunday. Depones, That on returning home to ſchool from dinner,

Mrs Stirling's Protest

8 Nov

A either on the Saturday or Sunday, ſhe remembers knocking at Mrs Woods' door, in order to ſee Miſs Woods, who was there at the time. Depones, That at this time the witneſs underſtood that ſhe was to continue at ſchool during the enſuing winter. Depones, That Miſs Woods came out to another room to her, when the wit-
B neſs ſpoke to her about her continuing at ſchool, mentioning, that her aunt liked it ſo very much. Depones, That ſhe mentioned to Miſs Woods that one of her aunts ſaid ſhe was ſo much improved, and the plan of ſtudy appeared ſo good, ſhe wiſhed ſhe had been there herſelf, or would like to be there herſelf. Interrogated by Lord
C Juſtice-Clerk, depones, She does not know that her mother made any inquiry in conſequence of the witneſs's complaint that the purſuers were naſty, &c. as above deponed to. Depones, That before her mother left town on Saturday or Sunday, ſhe told the witneſs ſhe intended that ſhe ſhould ſtay at ſchool. Interrogated for the
D purſuers, depones, That ſhe recollects of Miſs Munro coming into the ſchool-room on the Monday evening after the Sacrament, and ſhe thinks it was ſoon after Miſs Munro came home, and that ſhe did not obſerve any thing in Miſs Munro's conduct to the purſuers, being occupied with her own ſtudies. Interrogated, If on
E the evening of the Tueſday after, the witneſs remembers being in the ſchool-room, and if any thing particular then paſſed between Miſs Woods and Miſs Cumming? depones, She does not recollect that evening particularly; but ſhe remembers Miſs Woods blame Miſs Cumming for paſſing one of the puniſhment-cards, called the
F decorum-card, unjuſtly to another girl, and Miſs Woods ſaid Miſs Cumming was very unfeeling, and that the other girl had a great deal more good in her, or words to that purpoſe; but ſhe does not remember all that ſhe ſaid. Interrogated, If ſhe remembers the evening that Miſs Cumming finally left ſchool? depones, That ſhe
G does. Interrogated, If ſhe heard Miſs Woods that evening threaten Miſs Cumming with complaining to her aunts? depones, That ſhe did not hear it. Depones, That ſhe quitted ſchool herſelf on a Wedneſday, being the day after Miſs Cumming. Depones, That ſhe remembers on the forenoon of that day Mr P. Stirling and
H Miſs Iſabella Macdowall calling on her at Drumſheugh, and it was agreed that the witneſs ſhould dine that day at Mr Dundas's, and at that time the witneſs thought it likely ſhe would be taken away from ſchool, though ſhe did not know it with certainty. Depones, That an hour or two afterward, ſhe was ſent for and taken from
I ſchool finally. Depones, That when ſhe went away, ſhe took leave of the purſuers in the ordinary way, as if ſhe was to come

back

back again, and ſhe thinks ſhe ſaluted Miſs Woods of her own accord, and ſhe believes ſhe ſhook hands with Miſs Pirie. Interrogated, From what circumſtance ſhe thought it likely, as above deponed to, that ſhe would be taken from ſchool? depones, Becauſe her brother Mr P. Stirling, when he called, told her that her friends knew of the purſuers' improper behaviour, and that as Miſs Cumming and Miſs Dunbars had been taken away the day before, and had then told her, that ſome of their friends would let her friends know, ſhe had then ſuppoſed ſhe would be taken away. Interrogated, When and by whom was the witneſs firſt informed of the purſuers' improper conduct? depones, By Miſs Cumming one morning in their bed-room, but ſhe cannot be certain as to the time. Interrogated, depones, That Miſs Cumming frequently talked to her on that ſubject. Interrogated, If, after Miſs Munro came to ſchool, ſhe alſo frequently talked to her on the ſubject? depones, Not ſo frequently as Miſs Cumming. Interrogated, Was Miſs Cumming generally preſent when Miſs Munro talked to the witneſs on the ſubject? depones, That the firſt time ever Miſs Munro talked to her on the ſubject, as from her own knowledge, Miſs Cumming was with them; and the day Miſs Dunbars went away, Miſs Munro talked to the witneſs about it in the garden, and Miſs Cumming was in the garden; but the witneſs does not remember whether ſhe was walking with them at the time or not. Interrogated, How long it was before this walk in the garden that Miſs Cumming had mentioned it to the witneſs? depones, That ſhe does not know how many weeks, but it was a good while. Being interrogated by Lord Juſtice-Clerk, when ſhe ſaid what ſhe communicated to her mother was ſolely from the information of others, Whom does ſhe mean by the word *others*? depones, Miſs Cumming, Miſs Munro, and Charlotte the maid. Interrogated, Whether, in the courſe of any converſations, any circumſtances of impropriety in the behaviour of the purſuers were mentioned by Miſs Cumming or Miſs Munro, in ſuch a manner that ſhe thinks Charlotte the maid muſt have heard them? depones, She does not know. Interrogated, Did ſhe ever hear Charlotte make any remarks which implied that ſhe heard what paſſed in converſation between Miſs Cumming and Miſs Munro, relative to improprieties in the conduct of the purſuers? depones, She does not recollect; but ſhe remembers that the firſt time Miſs Cumming ſpoke to her on the ſubject, Charlotte the maid was preſent, and if ſhe did not hear all, at leaſt heard ſome of what paſſed upon the occaſion. Interrogated, and being

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A ing referred to a former part of her depoſition, in which Charlotte ſaid to herſelf they might as well take a man at once, She is deſired to recollect what had previouſly paſſed between Charlotte and her, which led Charlotte to make that obſervation? depones, That ſhe thinks it was that morning that ſhe had heard, either from Charlotte or Miſs Cumming, that Charlotte had B ſeen the purſuers in the dreſſing-room, and ſhe thinks it was that circumſtance which led Charlotte to make the obſervation. Interrogated, Whether, when ſhe mentions that Charlotte uſed ſo often to ſpeak about the purſuers, that ſhe could not remember C particular occaſions, Did what Charlotte ſay, uſually relate to improper or indecent behaviour in the purſuers to one another? depones, That the ſcholars were forbid to ſpeak to Charlotte, except upon neceſſary occaſions, and therefore the witneſs did not often ſpeak to her; but when Charlotte ſpoke to her about the purſuers, D it ſometimes related to indecent behaviour, and ſometimes to their quarrels. Interrogated by the Lord Juſtice-Clerk, Whether it conſiſts with the witneſs's own knowledge, that the purſuers had frequent quarrels during the laſt autumn? depones, It does. Interrogated, Was ſhe ever preſent at any reconciliation after ſuch E quarrels? depones, That ſhe once went into the ſmall parlour on the firſt floor, juſt at the time when they appeared to be in the act of reconciliation, after one of their quarrels, and ſhe did not hear what they ſaid, but they appeared to feel warmly towards each other. And being interrogated, If at that time, or ſince, upon re- F flection, after all ſhe has heard, it ſtruck her that there was any thing more warm or improper in their manner than became any other two friends under ſuch circumſtances? depones, Not in the leaſt. Interrogated, depones, There was no perſon in the room with them when the witneſs went in; and that the witneſs juſt G opened the door, or rather thinks it was open, and went in upon them and came out again. Interrogated for the purſuers, depones, That ſhe ſlept during the whole ſeaſon in the ſame room with Miſs Pirie and Miſs Cumming, and their beds ſtood near each other, at about two feet or two feet and a half aſunder. Interro- H gated, Did ſhe ever obſerve any thing improper take place on the bed where Miſs Cumming and Miſs Pirie ſlept? depones, She did not. Interrogated, If ſhe was induced by the information ſhe received from Miſs Cumming, to attend to what paſſed in that bed, ſo far as ſhe had an opportunity of obſerving it? depones, That ſhe I never had it in her power, for ſhe always fell aſleep, and ſhe never was awakened or diſturbed, but twice; once by ſomebody knock-

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ing at the door, and another time by ſomebody praying; and ſhe afterwards aſked Miſs Woods the meaning of the knocking. And depones, That the perſon who was praying ſpoke very loud, and was crying at the ſame time; and this was Miſs Pirie, as the witneſs knew from her voice. Depones, That when ſhe aſked the explanation of the knocking, Miſs Woods told her, that ſhe had locked the door, and that Miſs Pirie wanted to get into the room. Depones, That the witneſs thought Miſs Woods heſitated a little at firſt, when ſhe told her this. Depones, She thinks ſhe aſked Miſs Woods the next day after the knocking happened, about three o'clock afternoon. Interrogated, depones, That ſhe does not think Miſs Woods opened the door on that occaſion. Interrogated, Whether Miſs Cumming was in bed at the time Miſs Pirie was praying? depones, That ſhe was, for the witneſs ſpoke to her about it afterwards, and aſked if it was Miſs Pirie praying or ſpeaking, and the witneſs underſtood, either from the maid, or as ſhe rather thinks, from the maid, through Miſs Cumming, that the purſuers had been recently before quarrelling, and that ſhe did not underſtand Miſs Woods to have been in the room or in the bed during that time. Interrogated, Did ſhe hear, or was ſhe informed by Miſs Cumming of the purport of the prayer? Depones *Negative*, and the only words which ſhe heard, were, 'O Lord Jeſus Chriſt,' which were continually repeated, and when the witneſs ſpoke, ceaſed, and began again, and that the perſon who uſed theſe words was crying at the ſame time. Interrogated for the purſuers, depones, That Miſs Pirie generally ſlept with a bedgown, petticoat, and ſtockings. Interrogated, If ſhe can remember the time of theſe diſturbances? depones, That ſhe thinks the praying was before Miſs Munro came to the ſchool, and the knocking was after. Interrogated, Did Mrs Stirling, the witneſs's mother, write to the witneſs after ſhe left town? depones, That her brother brought a letter from her mother on the Wedneſday forenoon, when he called on the witneſs; at leaſt the witneſs received a letter about that time from her mother. Interrogated by Lord Meadowbank, When Miſs Cumming firſt told the witneſs about obſerving ſingular behaviour between the purſuers, did ſhe expreſs to the witneſs, that ſhe was doubtful what to underſtand about it? depones, That Miſs Cumming firſt aſked the witneſs if ſhe had been awakened, and then told her certain particulars, which the witneſs ſaid, ſhe did not underſtand, but Miſs Cumming ſeemed to the witneſs to underſtand what they had been doing. Interrogated, Did Miſs Cumming ever mention to the witneſs, having heard whiſpers or converſations

A converſations between the purſuers when they were in Miſs Cumming's bed? depones, That ſhe did, and ſome of thoſe converſations ſhe told the witneſs, and ſome of them, ſhe ſaid, that ſhe would not tell her. Being interrogated, If Miſs Cumming told her much of theſe converſations? depones, That ſhe ſaid they al-
B ways began with Miſs Woods aſking Miſs Pirie, 'Have you on
Reported Conversa- 'your ſtockings'; and another time, that Miſs Woods ſaid, 'not
tions 'to night, for it may awaken Miſs Stirling, and perhaps Miſs An-
'ſtruther;' and that the one ſaid to the other, 'Love me as I love
'you;' and ſhe does not remember any thing elſe diſtinctly, and
C therefore does not wiſh to ſpecify it. Interrogated for the purſuers, Whether Miſs Pirie gave the geography leſſons? depones, That ſhe did. And interrogated, depones, That theſe were generally given at the end of the long table next the fire, but ſometimes in another part of the room. Interrogated, Does ſhe re-
D member a diſpute between Miſs Cumming and Miſs Edgar, about the decorum-card, when Miſs Pirie ſaid Miſs Cumming behaved ill? depones, That the diſputes were ſo frequent about theſe cards, that ſhe cannot ſpecify the particulars of any one occaſion. Specially interrogated, If ſhe recollects, on one of theſe occaſions,
E the witneſs ſaying aloud to Miſs Cumming, If you are ſpeaking truth, you need not care who hears you? depones, She remembers ſomething of it, but not particularly, nor does ſhe remember what Miſs Pirie ſaid at that time. Specially interrogated, If Miſs Pirie told Miſs Cumming at this time, that ſhe had long thought that
F ſhe Miſs Cumming had no heart, but ſhe now feared ſhe had a bad one, or words to that purpoſe? depones, She does think ſhe
Hear no Swearing recollects Miſs Pirie having uſed words to Miſs Cumming to that effect, at leaſt to the effect of ſaying, 'She had no heart'; but does not recollect her ſaying, She had a bad heart; and her re-
G collection on the ſubject is not very deciſive at all. Interrogated by Lord Meadowbank, after the witneſs heard from Miſs Cumming of certain particulars, which Miſs Cumming appeared to underſtand to be improper in the conduct of the purſuers, Did the witneſs give any advice to her or to Miſs Munro, to let
H the purſuers know that they were diſcovered? depones, That ſhe did give ſuch advice to Miſs Cumming, but ſhe does not recollect giving it to Miſs Munro, nor does ſhe recollect on what ſpecial occaſion ſhe gave it. Interrogated, Did the witneſs ever hear Charlotte the maid deſcribe any conduct of the purſuers,
I in ſuch a manner that the maid's deſcription led the witneſs to think their conduct was indecent, independent of Charlotte's com-

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ments or opinions on the ſubject? depones, That the witneſs had very little converſation with Charlotte, but what Miſs Cumming told the witneſs, ſhe certainly thought extremely indecent. Interrogated for the defender, depones, That on the Tueſday that Miſs Cumming was taken away from ſchool, Miſs Cumming told her, that ſome of her friends would write to the witneſs's friends about taking her away; and the witneſs begged ſhe would put them in mind to do it, and this ſhe was very anxious about, and urged it repeatedly. And further depones, That the witneſs ſpoke to Miſs Iſabella Macdowall, and ſtated, that what ſhe heard of the purſuers' conduct was extremely improper, but ſhe did not deſire her to mention to any one, becauſe her brother told her, as already deponed to, that her aunt had received a letter upon the ſubject. Interrogated by Lord Juſtice-Clerk, Did any other young ladies at the ſchool beſides Miſs Cumming and Miſs Munro, ever tell the witneſs that they had obſerved any thing improper or indecent in the conduct of the purſuers to each other? depones, They did not. Interrogated by Lord Meadowbank, Did any of the other ſcholars appear to underſtand that any thing improper was practiſed between the purſuers? depones, That the Miſs Dunbars were the only other ladies that the witneſs converſed with upon the ſubject; but ſhe thinks the eldeſt Miſs Edgar had ſome ſuſpicion of it. Interrogated, From whom was the letter mentioned by her brother to have been written to her aunt? depones, She believes from Mrs Forbes.—Upon the depoſition being read over to her, the witneſs deſires it to be added, that at that place where ſhe ſays that Charlotte talked about the purſuers ſo often, that ſhe means to ſay, either that Charlotte the maid, ſpoke ſo often, or ſhe heard ſo often from Miſs Cumming about what Charlotte ſaid; and the above letter from Mrs Forbes to Mrs Dundas, is now produced, and marked by the clerk as relative hereto. Interrogated for the purſuers, Whether ſhe ever heard Charlotte ſpeak diſreſpectfully or reproachfully of the purſuers, calling them beaſts, and 'worſe than beaſts,' and ſaying they were 'pretty ladies,—'ſhe was a better lady herſelf,' or words to that purpoſe? depones, That ſhe has heard Charlotte ſpeak diſreſpectfully of her miſtreſſes, and uſe ſome ſuch expreſſions as that they were 'pretty 'ladies, and that ſhe thought herſelf better than them;' and ſhe thought Charlotte's behaviour very improper at the time, but ſhe does not recollect upon what occaſion this was. Depones, That when Charlotte firſt ſpoke to herſelf alone upon the ſubject, the witneſs

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A witneſs was ſo horriſied, that ſhe herſelf uſed ſome ſuch expreſſion as ' beaſts.' All which is truth, &c.

Thereafter the defender offered Margaret Little, preſently ſervant to Mrs Morison, as a witneſs, to whoſe admiſſibility an ob-
B jection was ſtated by Mr Clerk for the purſuers; and an anſwer was made by Mr Erſkine for the defender; both of which the Judges ordered to be reduced into writing; and having deliberated on what is ſtated, they ſuſtain the objection, and refuſe to receive the witneſs.

C Mr Erſkine then declared the proof cloſed on the part of the defender, under reſervation of the evidence which he propoſes to bring of the defender's recommendation of the ſchool, and communication of her diſcovery to Lady Cunynghame and Mrs Anſtruther, and alſo reſerving his right to lead proof in replica-
D tion.

The Judges then adjourned till to-morrow, at the ſame place and hour.

Edinburgh, 23*d May* 1811.

In preſence of the Right Honourable Lord MEADOWBANK, and of the Counſel and Agents for the parties,

Compeared Mrs CHARLOTTE LUCY HAMILTON AN-
F STRUTHER, widow of the late General Robert Anſtruther, aged thirty and upwards; who being ſolemnly ſworn, purged of malice and partial counſel, examined and interrogated, depones, That the witneſs's daughter was at the ſchool of the purſuers when it broke up: That Lady Chriſtian Erſkine and the Miſs
G Erſkines, her daughters, were the firſt perſons, as far as ſhe recollects, that recommended the purſuers' ſchool to the witneſs: That on this recommendation the witneſs wrote to her ſiſter-in-law Mrs Campbell of Stonefield, to inquire about the character of the purſuers, and the witneſs was informed by Mrs Campbell that
H ſhe had learnt from Lady Cumming Gordon, a highly favourable character of the purſuers, and that it was impoſſible for any perſon to ſpeak more favourably than her ladyſhip had done; and ſhe received this information from Mrs Campbell before ſhe put her daughter to the ſchool; and ſhe does not recollect having
I heard any thing farther as to the character of the ſchool previous to her ſending her daughter thither; but this inſtant the witneſs does

does recollect, that Mrs Campbell told her, that Mrs Hamilton, a preceding witneſs, had alſo ſtrongly recommended the ſchool. Interrogated for the purſuers, depones, That after what is above deponed to, ſhe remembers having called, in company with Mrs Campbell, upon Mrs Hamilton, for the purpoſe of being introduced to Mrs Hamilton, and not for the purpoſe of inquiring the character of the ſchool; but in the courſe of converſation ſhe did inquire as to the character of the ſchool, which was certainly very favourable; but the witneſs cannot recollect, ſo as to be poſitive, whether this happened before or after her daughter was ſent to the ſchool, but ſhe rather thinks it is likely it was before it. Depones, That the witneſs formed a high opinion of the ſchool from the proficiency her daughter made there and otherwiſe, and the witneſs has obtained Miſs Pirie's attendance upon her daughter ever ſince the ſchool broke up; and Miſs Pirie's attendance is two or three days a-week, and for an hour or more each day. All which is truth, &c.

Mrs ELIZABETH CAMPBELL, widow of the late Lieutenant-Colonel John Campbell of Stonefield, aged forty and upwards; who being ſolemnly ſworn, purged of malice and partial counſel, examined and interrogated, depones, That ſhe recollects her ſiſter-in-law Mrs Anſtruther, having ſent her a paper, containing the plan of the purſuers' ſchool, and that the witneſs having come to Edinburgh, made ſome inquiries as to the character of the ſchool; and ſhe remembers particularly her having converſations with Mrs Hamilton, with Lady Chriſtian Erſkine, or her daughters, and Miſs Jane or Miſs Sophia Cumming, ſhe is not ſure which, but is uncertain, and rather thinks ſhe did not ſpeak with Lady Cumming Gordon on the ſubject, and ſhe is certain ſhe received a very warm recommendation from one or other of the Miſs Cummings, and ſhe rather thinks Miſs Jane, and ſimilar recommendations from the other ladies above mentioned; and the witneſs communicated this information to Mrs Anſtruther, who was in Edinburgh, when ſhe ſent the witneſs the plan of the ſchool, and had remained there. All which is truth, &c.

PURSUERS' PROOF,

IN CAUSA,

Miſſes WOODS and PIRIE againſt Lady CUMMING GORDON.

Edinburgh, 29th March 1811.

In preſence of the following Judges:—The Right Honourable Lord JUSTICE-CLERK, Lords MEADOWBANK, ROBERTSON and NEWTON, and the COUNSEL and AGENTS for the Parties.

A The purſuers offered JAMES HARE, Eſq; of Calder-Hall as a witneſs, to whoſe admiſſibility an objection was ſtated by Mr Erſkine for the defender, and an anſwer was made by Mr Clerk for the purſuers, both of which the Judges ordered to be reduced into writing; and having deliberated on what is ſtated, the Judges re-
B fuſe, *in hoc ſtatu*, to allow Mr Hare to be examined on the matters propoſed; reſerving for the conſideration of the Court, whether, *ex proprio motu* of their Lordſhips, they may conſider it proper, before adviſing the cauſe, to examine Mr Hare, and other witneſſes to a ſimilar effect.

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Thereafter compeared ISABELLA CAMPBELL, ſervant to the purſuers, unmarried, aged ſixteen; who being ſolemnly ſworn, and purged of malice and partial counſel, examined and interrogated, depones, That ſhe was hired by Miſs Pirie and
D Miſs Woods as their ſervant about a fortnight or three weeks before Martinmas laſt; and on the night before ſhe finally engaged with them, ſhe inquired at Charlotte, the maid-ſervant then with them, as to the character of the place: That Charlotte told her it was a very good place; that ſhe herſelf liked it very
E well, and ſhe ſtrongly adviſed the witneſs to take it, and added that ſhe herſelf was to continue; and Charlotte at that time ſaid nothing

nothing ſlighting or diſreſpectful of her miſtreſſes, and never did A
ſo at any other time. All which is truth, &c. And depones that
ſhe cannot write.

Mrs HELEN CAMPBELL, widow of the deceaſed General Camp-
bell of Strachur, aged forty and upwards; who being ſolemnly B
ſworn, purged of malice and partial counſel, examined and interro-
gated, depones, That ſhe is acquainted with the purſuer Miſs Pirie,
who lived two years in her family as governeſs to her nieces, and
quitted her family at Martinmas 1809. And depones, That during
the time Miſs Pirie lived with her, ſhe gave the witneſs perfect ſatis- C
faction, and ſhe conſidered her entirely well qualified for the charge
of young people, and that ſhe wiſhed her to have remained longer
in her family, and it was partly in conſequence of her leaving it,
that ſhe came to reſide in Edinburgh for the education of her nieces.
Interrogated by the Lord Juſtice-Clerk, Whether ſhe made any ob- D
ſervation on Miſs Pirie's temper, as being a perſon of warm tem-
per and keen feelings? depones, That at times ſhe thought her
keen. All which is truth, &c.

The Reverend SIMEON REID, Epiſcopal miniſter in Edinburgh, E
widower, aged forty and upwards; who being ſolemnly ſworn, pur-
ged of malice and partial counſel, examined and interrogated, de-
pones, That he knows the two purſuers and Mrs Woods, but
is principally acquainted with Mrs Woods. Depones, That he
knows that there was a difference between Mrs Woods and F
Miſs Pirie, as the witneſs was employed to bring about an
amicable ſeparation between them: That Mrs Woods ſpoke to
him on the ſubject, and told him that ſhe conſidered herſelf as ſo
ill uſed by Miſs Pirie, that ſhe found it neceſſary to part, but wiſh-
ed to do it on amicable terms, and requeſted the witneſs's aſſiſtance G
to bring it about: That the witneſs accordingly called two or
three times on Miſs Pirie, and arranged the ſeparation without
any difficulty; and this happened about two months before Mar-
tinmas laſt. All which is truth, &c.

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Mrs ELIZABETH HAMILTON, reſiding in George's Street,
Edinburgh, unmarried, aged fifty and upwards; who being ſolemnly
ſworn, purged of malice and partial counſel, examined and interroga-
ted, depones, That ſhe is acquainted with the purſuer Miſs Pirie, and
has known her about ſix years. Depones, That ſhe underſtands Miſs I
Pirie

A Pirie has been in different ſituations, having the charge of young la-
dies; and particularly ſhe was ſix months in the houſe with the wit-
neſs, when Miſs Pirie had the charge of Lord Lucan's daughters,
ſince which time the witneſs, as Miſs Pirie has lived little in Edin-
burgh, has ſeen little of her. Depones, That it appeared to the
B witneſs, that Miſs Pirie was a very conſcientious, well principled
young woman, rather irritable in her temper, but very ardent in
the diſcharge of her duty, at that time not of the moſt poliſhed
manners, but of great propriety of moral conduct, and what the
witneſs thought her particular qualification was her uncommon
C zeal to perform her duty to her pupils. Depones, That ſhe recol-
lects, that one time in the autumn, when ſhe was in Lord Lucan's
Rheumatism family, Miſs Pirie complained ſo much of the rheumatiſm as to
be confined with it, and prevented from going out as uſual with
her pupils, and particularly to bathe; and the witneſs remembers
D this the more particularly, that ſhe was obliged to ſend out her
own maid with the young ladies. Depones, That ſome time in
September or beginning of October laſt, as far as the witneſs can
recollect, Miſs Pirie requeſted of the witneſs to be permitted to
wait upon her, and ſhe came accordingly: That ſhe told her ſhe
E wiſhed very much to receive her advice on a matter that had gi-
ven her great concern: That ſhe found that one of her pupils
had been taken to receive the ſacrament, whom ſhe found to be
very deficient in religious inſtruction: That Miſs Woods took
charge of the young ladies who were of the Church of England, and
Miſs Pirie herſelf of thoſe who were of the Church of Scotland;
and that as the period of receiving the ſacrament in Edinburgh
was again approaching, ſhe was much ſhocked at the idea, that
that young lady might be again taken by her friends to receive
the ſacrament, with ſo little impreſſion on her mind of the nature
G and ſolemnity of that rite, and of religion in general, and that ſhe
was extremely anxious to do every thing in her power to prepare
her for it in a ſuitable manner, and requeſted the witneſs's advice
as to what books ſhe would recommend to be put into her hands
for that purpoſe: That the witneſs did accordingly point out to
H Miſs Pirie ſuch books as occurred to her, and ſuch line of con-
verſation as appeared to her beſt adapted for the purpoſe, particu-
larly warning her againſt defeating her own good intentions, by
her too fervent manner, which ſhe had formerly found fault with.
Depones, That upon another occaſion, and as far as the witneſs
I recollects, about the beginning of November, Miſs Pirie came
again to her in very great agitation, ſaying, that ſuch diſagreeable
things

things had happened, that she was much afraid the establishment at Drumsheugh must be broke up, however advantageous and seemingly prosperous: That she considered, that Mrs Woods used her extremely ill, by holding out herself and Miss Woods as the principal persons, and putting her in the back ground, and that Miss Woods adhered so much to her aunt, that she was much afraid it must come to a rupture at last; that she also thought it very hard and unjust, that Mrs Woods should claim a third of the profits, when she brought no capital into the partnership: That the witness then naturally asked if there were no written articles of agreement, to which all parties might refer: That upon Miss Pirie's saying there were no such articles, the witness told her she thought that very foolish, and that she had brought the difficulty upon herself: That Miss Pirie seemed sensible of this, but asked the witness's advice as the case stood: That the witness told her, she thought she should go about it as quietly as she could, and endeavour to get some sensible gentleman to settle the difference between them, as a mutual friend; and the witness, on looking through her papers, to see if there were any letter or note of Miss Pirie's that could mark dates, found only one letter, which she now produces, and which is marked as relative hereto, and she received this letter after the conversation above deponed to. Depones, That Mrs Campbell of Stonefield and Mrs General Anstruther, called upon the witness, to ask her opinion of the school before Miss Anstruther went there, and the witness gave her opinion of Miss Pirie, very much as she has done now, as in every respect a safe person to have the charge of young ladies: That with regard to Miss Woods, she was not acquainted with her, but had heard a good character also of her: That the witness added to Mrs Anstruther, that Mrs Sandford, the lady of Bishop Sandford, was highly satisfied with the school, and had used the strong expression to the witness, that it would be a disgrace to Edinburgh, if that school did not succeed. Interrogated for the defender, depones, That Miss Pirie came to Lord Lucan's family in May 1805. All which is truth, &c.

3d of profits

GEORGE THOMSON, principal clerk to the Board of Trustees for manufactures, married, aged fifty and upwards; who being solemnly sworn, purged of malice and partial counsel, examined and interrogated, depones, That he is acquainted with Miss Woods, and first became so a few years before the death of her uncle Mr Woods, in whose family she resided. Being interrogated, and desired to say, What he remarked as to the

manner in which Miſs Woods' education was conducted? depones, That from his intimacy with Mr Woods he frequently called there, and occaſionally ſpent the evening with him: That he had thereby opportunities of converſing with Miſs Woods at table, and thought her a remarkably modeſt, well behaved young woman: That he knows Mr Woods paid particular attention to her education, and ſuperintended it himſelf; and in particular, ſpent many hours a day with her, in reading with her, and pointing out the beauties of the Engliſh language, ſo as to qualify her for earning her own bread as a teacher or governeſs: That the witneſs has had leſs frequent intercourſe with her ſince her uncle's death, but has had no reaſon to alter the opinion he had formed of her. Depones, That ſhe never was an actreſs, nor upon the ſtage, (as the deponent is certain,) except once, when, by way of attraction to her uncle's friends, ſhe appeared at his benefit and danced, he thinks, with another young lady; and he ſuppoſes Miſs Woods might be then about twelve or thirteen years of age. Interrogated by the Lord Juſtice-Clerk, Whether Miſs Woods, while in her uncle's family, was allowed to aſſociate with the ordinary female players? depones, That he believes ſhe was not; for he knows that Mr Woods himſelf did not aſſociate with the performers, except thoſe of reſpectability; and he knows it was his earneſt deſire, that Miſs Woods ſhould be educated in the moſt virtuous principles. Depones, That he knows that Miſs Woods has been employed in Edinburgh in teaching Engliſh ſince a very early period in life, even before Mr Woods death, and was for ſome time a teacher at Camden Houſe boarding-ſchool, near London. All which is truth, &c.

ANN WOODS, widow of the late William Woods, comedian, aged ſixty and upwards; who being ſolemnly ſworn, purged of malice and partial counſel, examined and interrogated, depones, That ſhe has been very ill lately, and is ſtill very weakly. Depones, ſhe remembers her huſband taking his niece Miſs Woods to live with them, and ſhew as then about ſeven and an half years old. Depones, That Mr Woods and ſhe endeavoured to give her as good an education as was in their power, and to inſtil into her the beſt principles, with a view to Miſs Woods' earning her own bread by her accompliſhments and good character, and that ſhe ever found her a well diſpoſed and well principled girl. Depones, That at firſt ſhe aſſiſted Mr Woods in teaching; but when ſhe became of age, Mr Woods, thinking her perfectly qualified, made her independent of him, and ſhe then began to teach on her own account. Depones, That about three

years

years ago, ſhe went to Camden Houſe boarding-ſchool, not with a view to learn any thing herſelf, but as a teacher; and more particularly, with a view to ſee how a large eſtabliſhment of that kind was conducted. Depones, That ſhe knows that Miſs Woods formed an acquaintance with Miſs Pirie, and ſhe thinks it was by attending the ſame claſſes in Edinburgh. Depones, That from their views in life being the ſame, and perhaps from a favourable opinion of each other's ablities, they appeared to form an attachment to each other. Depones, That ſhe was not much acquainted with Miſs Pirie at that time, and ſhe cannot ſay ſhe thought ſhe poſſeſſed that poliſh of manners which Miſs Woods had acquired, but ſhe had no objection to her in a moral or religious view; on the contrary, from her own reliance on her niece's virtue and diſcernment, ſhe was quite ſatisfied that ſhe would not have aſſociated with her, unleſs her principles and morals had been unexceptionable,: That with regard to her temper, ſhe knew her ſo little as not to be a judge of it at that time. Depones, That when the ſchool at Drumſheugh was ſet agoing, it was ultimately agreed that the witneſs ſhould take a ſhare in the concern, and ſhe began with her niece at Whitſunday 1809, and Miſs Pirie joined them at Martinmas thereafter; and ſhe did not know, till ſhe underſtood from certain circumſtances that happened after Miſs Pirie came to the ſchool, that the witneſs was to take no farther concern than in the management of the domeſtic affairs. Depones, That during the firſt half year there were few boarders, and there was a loſs of about L. 25 to each of the three. Depones, That after Miſs Pirie joined them, ſhe ſeemed to be very diſcontented and unhappy, and behaved in a very imperious manner, as the witneſs thought towards her, and indeed alſo towards her niece. Depones, That Miſs Pirie never expreſſed any cauſe of ſuch diſcontent, except one which had ariſen out of the circumſtances of the ſchool having been conducted for the firſt half-year by her and her niece, and which was rectified as ſoon as Miſs Pirie objected to it: That this cauſe of complaint was, that the tradeſmens bills, for articles furniſhed to the houſe, were made out chiefly in the witneſs's name: That Miſs Pirie took offence at this, and her niece brought to her a ſcroll of a ſhort memoranduin, which Miſs Piric wiſhed to be inſerted in the book or their expenditure, and this was accordingly done; and it occurred in February was a twelvemonth, and the witneſs will produce the book if it can be found: That, however, this did not appear to do away the differences, as there continued to be a diſſatisfaction and diſcontent on the part of Miſs Pirie, both towards the witneſs and her

A her niece, and ſhe certainly thought Miſs Pirie behaved ill both to her and her niece, as every thing was done to ſatisfy her, but without ſucceſs. Depones, That Miſs Woods complained to the witneſs of Miſs Pirie's conduct, and ſhe told Miſs Pirie, in the witneſs's preſence that ſhe thought ſhe endeavoured to make the ſcholars treat B her with diſreſpect, and that Miſs Woods ſaid ſhe had put up with it for ſome time, but if Miſs Pirie perſiſted in it, ſhe might depend upon it ſhe would expoſe her before the ſcholars: That the witneſs ſaid nothing, as ſhe hoped their own good ſenſe would make them ſee the impropriety of this: That Miſs Woods about the ſame time C in private told the witneſs ſhe was ſo exceedingly unhappy, that ſhe had thoughts of leaving the houſe without even telling Miſs Pirie, and the witneſs was exceedingly alarmed leſt ſhe ſhould do this, and remonſtrated with her againſt leaving her alone with Miſs Pirie: That ſhe thinks this was about ſix months before the ſchool D broke up. Depones, That though ſhe did not herſelf ſee much of their quarrels, yet from the little ſhe did ſee, and from her niece's appearance and expreſſions of unhappineſs, ſhe thinks their differences rather increaſed, particularly during the laſt three months that the ſchool continued. Depones, That down to the latter end of E Auguſt laſt, the witneſs always took her meals in the ſchool-room with the family; but about that time Miſs Pirie and the witneſs had ſo particular a difference regarding her behaviour to her niece, and Miſs Pirie inſulted the witneſs ſo much, that ſhe took a final determination to leave the houſe, and not to aſſociate with Miſs F Pirie any more during her continuance in it; and after that the witneſs always took her meals in her own room, which were ſent up to her from the ſchool-room; and on the occaſion of the above quarrel, the witneſs and her niece left the ſchool-room, and Miſs Woods told her that ſhe herſelf would never again go to the ſchool-room but for the purpoſe of teaching; and after this quarrel in the month of Auguſt, Miſs Woods conſtantly ſupped with the witneſs in her room. Depones, That ſoon after this quarrel, and at night, when Miſs Woods was in the witneſs's room, the witneſs and ſhe had a difference, in conſequence of which they continued toge- H ther much longer than either of them was aware of, and day broke before they parted: That when Miſs Woods ſupped with the witneſs, ſhe was always in her day dreſs, as far as the witneſs recollects, and ſhe was ſo on the above occaſion. Depones, That after the above quarrel in the month of Auguſt, the witneſs had no opI portunity of knowing how they conducted themſelves in the ſchool-room, or whether their quarrels were known to the ſcholars or not.

not. Depones, That ſhe never ſaw or heard in any of the ſervants any thing tending to the leaſt diſreſpect towards their miſtreſſes, but, on the contrary, in ſo far as they had occaſion to ſpeak of them, it was always in terms of ſatisfaction. Depones, That Miſs Woods never was on the ſtage as an actreſs at all, but once ſhe danced a minuet for her uncle's benefit, and once for the benefit of her own maſter Mr Aldrige's family, which was at that time in diſtreſs, when Mr Woods permitted her to dance a minuet with Mr Aldridge's ſon: That at that time ſhe was a very little girl, not more than ten or eleven years old: That Mr Woods did not permit her to frequent the Theatre, but occaſionally allowed her to go to ſee the play on a Saturday after her ſtudies were over. Depones, That the beds in the room in which Miſs Woods and Miſs Munro ſlept were the witneſs's property, and the bed in which theſe two ſlept was an older bedſtead than the reſt, but a very good one. Depones, That the witneſs ſtill continues to keep a ſchool for her own ſupport, and ſhe cannot poſitively ſay, but has ſome reaſon to think, that ſhe has been injured by reports that have gone abroad relative to the preſent caſe. Interrogated for the defender, depones, That Mr Woods died eight years ago, in December laſt. Interrogated by the Lord Juſtice-Clerk, Whether, independently of the unfortunate differences that took place between her niece and Miſs Pirie, ſhe ever obſerved any other impropriety of conduct between them? depones, Never. Interrogated, If, in point of morality and principles, ſhe conſidered them both ſafe perſons to be entruſted with the education of young ladies? depones, That ſhe had the higheſt confidence in both of them in every reſpect. All which is truth, &c.; and the book referred to is now produced, and marked as relative hereto.

The Judges then adjourned till to-morrow at the ſame hour and place.

Edinburgh, 30*th March* 1811.

In preſence of the Right Honourable Lord JUSTICE-CLERK and Lord MEADOWBANK, &c.

Compeared DAME MARY CUNYNGHAME, ſpouſe of Sir William Auguſtus Cunynghame, Baronet, aged fifty and upwards; who being ſolemnly ſworn, purged of malice and partial counſel, examined and interrogated, depones, That the witneſs's daughter was at the ſchool at Drumſheugh, kept by the purſuers. Interrogated, Who firſt recommended the

A ſchool to the witneſs; to which Mr Cranſtoun, for the defender, objected, as on a paper-a-part; and the Judges repelled the objection; and the witneſs being called in, and the queſtion repeated, depones, That when Monſieur Turreau, who had been fourteen years in the witneſs's family, was going to
B leave them, he was extremely anxious that the young lady ſhould be put under the charge of a perſon who would take proper care of her, and he undertook to make inquiry, and he reported to the witneſs that he had received the higheſt character of Miſs Woods; but at that time Miſs Woods' houſe was not ready; and the
C witneſs having alſo received a very high character of a Miſs Weſton, ſhe placed her daughter with her, and ſhe probably would have continued with Miſs Weſton if ſhe had not gone to England; and on Miſs Weſton going to England, the witneſs ſent her daughter to the purſuers' ſchool. Interrogated, From whom ſhe next
D heard the character of the ſchool? depones, That ſhe cannot recollect, becauſe ſhe made a great many inquiries; in particular, ſhe remembers dining one day at Mr Walker's at Dalry, where Lady Cumming Gordon was, and knowing that ſhe had ſome young friends at the ſchool, the witneſs inquired at her what was
E her opinion of it, and Lady Cumming Gordon gave it the higheſt character: That ſhe alſo one day, being accidentally in company with Miſs Erſkine of Cardroſs, who ſhe alſo underſtood had a young friend there, made ſimilar inquiries at her, and received the ſame ſatisfactory account: That ſhe alſo deſired Miſs Arbuth-
F not to make inquiries at Mrs Hamilton about Miſs Pirie, who ſhe underſtood had been with her in England, and Miſs Arbuthnot brought her a very ſatisfactory anſwer: That ſhe alſo remembers making ſimilar inquiries at Mrs Profeſſor Dalzell, having many years before known that Miſs Woods taught in that family, and
G heard the Profeſſor talk of her in terms of high commendation, and recommend her to the witneſs in caſe ſhe ever had occaſion for a perſon in her line; but which of all theſe recommendations ſubſequent to Monſieur Turreau preceded the other, the witneſs does not recollect at preſent. Depones, That her daughter went
H to the ſchool accordingly, and never made any complaint to her of any thing that ſhe had obſerved there, and the witneſs was highly ſatisfied with the progreſs which her daughter made. And depones, That ſhe had no intention of taking her daughter away from the ſchool when ſhe did ſo, independent of the reports which
I began to be then in circulation to its diſadvantage. And a card, No. 5. of the proceſs, being exhibited to the witneſs, depones, That

ſhe

ſhe received that card, and the ſame is marked as relative hereto. A
Depones, That after receiving the card, ſhe called on Lady Cumming Gordon to thank her for having ſtated to her that ſhe had objections to the ſchool: That the witneſs aſked Lady Cumming Gordon what theſe objections were, and her ladyſhip ſaid ſhe did not wiſh to ſtate them: That the witneſs again aſked her, and B
mentioned that ſhe did not wiſh to take her daughter from the ſchool on a mere report of objections, without knowing what theſe objections were: That Lady Cumming Gordon added, that ſhe was not at liberty to tell them. Depones, That the witneſs aſked Lady Cumming Gordon if all the parents had taken their children C
from the ſchool merely on a general report from Lady Cumming Gordon, without inquiring into any particulars; and the witneſs deſired to know why ſhe was to take ſo ſtrong a meaſure againſt two young women of whom ſhe had ſo high an opinion, without knowing the reaſon. Depones, That Lady Cumming Gordon felt D
the force of this obſervation, and went out of the room, ſaying ſhe would let her know in a few minutes whether ſhe was at liberty to tell her or not: That Lady Cumming Gordon returned and ſaid ſhe did not feel herſelf at liberty: That the witneſs told her ſhe moſt certainly ſhould not take away her child from the E
ſchool without knowing the reaſon; but that as there was ſo much myſtery about it, ſhe would go herſelf to Miſs Woods and ſtate to her the manner in which ſhe was deſired to take her daughter from the ſchool: That Lady Cumming Gordon then ſaid, if the witneſs would call again in two hours, ſhe would obtain leave to F
tell her; and the witneſs replied, it appeared to her very extraordinary that Lady Cumming Gordon ſhould find it neceſſary to obtain liberty to tell the reaſon to her, the parent of the child, but ſince it was ſo, ſhe would wait with pleaſure. Depones, That in relation to taking her daughter from the ſchool, ſhe ſhould have G
mentioned in the order of time, that on the morning before receiving Lady Cumming Gordon's card, ſhe called upon a young lady, who very ſoon, in the courſe of converſation, ſaid to the witneſs, 'What have you done with Mary?' the witneſs anſwered, 'She is 'at Drumſheugh'; and the lady anſwered, 'Then you muſt not loſe I
'a moment in taking her away, for I have juſt taken away theſe 'two young ladies.' The witneſs then aſked, 'What was the mat-'ter?' and the young lady ſaid, 'She did not know.' The witneſs then ſaid, 'Is it the ſcarlet fever?' of which ſhe was in great dread; the lady anſwered 'No, no,' it was not that, but that all the young ladies were already gone but one or two: That the witneſs ſaid,

'Well,

A ‘ Well, well, my daughter has been ſo long there, that there can be
‘ no harm in her ſtaying a day longer till I inquire farther about the
‘ matter:’ That upon this the lady followed her to the door as ſhe
left the room, and ſaid, ‘ Lady Cunynghame, if you are not
‘ particularly engaged, you had better drive to Drumſheugh, and
B ‘ take your daughter away before you go home.’ The witneſs,
however, ſtill thought it more prudent to make farther inquiry,
and drove to Mrs Dalzell's. Depones, That on going to Mrs Dal-
zell's, ſhe ſaid ‘ What is this Mrs Dalzell that has been going on
‘ at Miſs Woods ſchool; I underſtand all the children are taken
C ‘ away, and they are making a ſad piece of work:’ That
Mrs Dalzell ſaid, ‘I do not know, but I ſuppoſe your Ladyſhip
‘ has received a card from Lady Cumming Gordon:’ That the wit-
neſs anſwered ‘She had not,’ and added, ‘but I ſhall not take Mary
‘ away till I know more about the matter;’ and the witneſs now
D remembers diſtinctly, that it was not till the evening of that day
that the witneſs received the card from Lady Cumming Gordon,
and it was next morning that ſhe called upon the defender, and
had the converſation above deponed to. And depones, That from
Mrs Dalzell's, the witneſs, in company with Miſs Dryſdale, Mrs
E Dalzell's ſiſter, drove to Drumſheugh, and called for Miſs Woods,
whom they ſaw. Depones, That the witneſs ſaid to her, ‘ I ſup-
‘ poſe you know the purpoſe of my coming here this morning?’
and Miſs Woods replied, ‘ I too well judge it.’ Depones, That the
witneſs then ſaid to her, ‘ Miſs Woods, I dont know what has hap-
F ‘ pened, but I am grateful to you for the kindneſs and attention
‘ you have always ſhown to my daughter; there is only Miſs Dryſ-
‘ dale, you and I preſent, if you have done any thing imprudent,
‘ and will diſcloſe it confidentially to me, you may rely on my
‘ advice and aſſiſtance to the utmoſt of my power, to extricate
G ‘ you from the ſcrape, if poſſible, whatever it may be:’ That Miſs
Woods was much affected, and with great emotion thanked the wit-
neſs for her kindneſs, but ſaid, ‘ She could not avail herſelf of it,
‘ for ſhe was herſelf utterly ignorant of what was laid to her
‘ charge, and was not conſcious of any thing.’ And the Judges
H Commiſſioners think it proper here to take down, that Lady Cu-
nynghame was herſelf much affected when ſhe narrated theſe cir-
cumſtances; and ſhe added, that Miſs Woods, then in great agita-
tion, threw her arms round Miſs Dryſdale, and earneſtly entreated
her and Mrs Dalzell to endeavour to find out of what ſhe and her
I partner were accuſed. Depones, That the witneſs was ſo ex-
tremely affected with Miſs Woods' behaviour, that ſhe ſaid to
her.

her, that she could not bring herself to take her daughter from her under such circumstances, but would at least delay it till next morning; but Miss Woods herself said to her, that as all the chief scholars were already gone, she thought it was better that the witness should also take her daughter; but the witness persisted, and left her daughter till the next day; and having afterwards heard something of the nature of the reports, from her communication with the defender, she thought it improper to shew any more patronage to Miss Woods, and has not seen her since. Interrogated for the pursuer, depones, That Miss Woods expressed herself very grateful to the witness for her kindness, in being the first person, during the two preceding days of trial, who had entered the house, or spoke a word to her on the subject, the others having sent for the girls without any kind of communication. Interrogated, depones, That after leaving Lady Cumming Gordon's, as formerly deponed to, she returned to her at the distance of about three hours, and Lady Cumming Gordon then communicated to the witness those particulars which had induced her to take away her grandchildren from the pursuers' school. Interrogated, depones, That upon the witness hearing these circumstances, she said to the defender, 'Bless me, Ma'am, are you sure 'of it?' and Lady Cumming Gordon answered, 'O yes, you may 'rely upon it, there is no doubt at all about the matter;' and the deponent made no farther inquiry as to her Ladyship's authority. Depones, That upon this the witness sent for her daughter from school. Depones, That Miss Weston, after this, had very great difficulty in taking the witness's daughter into her school, some of the parents of her scholars having objected; and the witness understood from what Miss Weston said, that if her daughter had been examined as a witness in this case, she must have left the school. And further depones, That Miss Weston positively refused to the witness to take two other young ladies, on account of their having been at the pursuers' school. Interrogated for the defender, depones, That the witness thinks she had some conversation with one of the Miss Cummings at the Duchess of Gordon's, but with which she cannot say, about the school, when Miss Cumming spoke very highly of the school; and at this time the witness was little, if at all acquainted with Lady Cumming Gordon, and had never visited her until she called upon her in consequence of the card in process; and the witness on other occasions has also had conversations with Lady Cumming Gordon, or the Miss Cummings, respecting the school. Interrogated, depones, That upon the

A second occasion when she called upon the defender, and when the defender did mention the particulars above alluded to, she certainly enjoined secrecy to the witness, and cautioned her not to mention it to a single individual, not even to Sir William. Interrogated by Lord Meadowbank, If the witness ever learned that
B Miss Cunynghame had received any information at the school, or heard any surmises there, of any thing of these improprieties mentioned to the witness by Lady Cumming Gordon? depones, Not in the least.

Edinburgh, 23d May 1811.

In presence of the Right Honourable Lord MEADOWBANK, and of the Counsel and Agents for the Parties,

C Compeared Mrs ELIZABETH DUNDAS, spouse of James Dundas, Esq; writer to the Signet, aged forty and upwards; who being solemnly sworn, purged of malice and partial counsel, examined and interrogated, depones, That previous to Wednesday the 15th of November last, the witness had received no impres-
D sion from any quarter unfavourable to the pursuers, except from Miss Eliza Stirling, when she visited her mother at the witness's house, having said of them that she wished they were as good as they appeared; and she cannot recollect how this observation arose. That it made little impression upon the witness: That Mrs Stir-
E ling asked if any men frequented the family, as to which Miss Stirling said 'No,' on which Mrs Stirling appeared satisfied; and all Miss Stirling further said was, 'Oh! they are so nasty;' but on that Wednesday the witness received a card from Mrs John Forbes, formerly produced, and now marked as relative hereto,
F which she shewed to Miss Stirling's brother, who was then at breakfast with the witness; and at his request she immediately waited on Mrs Forbes, and asked her what the matter was: That Mrs Forbes first referred her to Miss Stirling for explanation, and at last, after some difficulty, and the witness having betrayed ex-
G treme agitation, Mrs Forbes did communicate the intelligence, first, that it did not concern the young ladies, and at last, what she understood it really was. Depones, That at this time she did not know that Mrs Kennedy had a charge of any of the scholars; but the witness having been called in to Miss Stevenson's, she
H learnt that circumstance, and also the information which Miss Stevenson had derived from Miss Munro, which corresponded perfectly

perfectly with what ſhe had heard from Mrs Forbes, and thereupon ſhe went to Mrs Kennedy, with whom ſhe is nearly related, and gave her the information. Depones, on the defender's interrogatory, That ſhe knows that Mr John Forbes was upon a very intimate intimate footing of acquaintance with the Kippenroſs family for a great number of years, though the witneſs had never been in Mrs Forbes's houſe before the occaſion now mentioned. Depones, on the purſuers' interrogatory, That Miſs Stirling was taken away from ſchool by her brother, before the witneſs had any communication with him ſubſequent to their converſation at breakfaſt. Depones, That ſhe deſired Mrs Kennedy not to mention the matter, but Mrs Kennedy ſaid ſhe muſt mention it to Mrs Dalzell, who had recommended the ſchool. All which is truth, &c.

Mr ERSKINE, on the part of Lady Cumming Gordon, defender, admits, That the young lady mentioned in Lady Cunynghame's depoſition, as having adviſed her ladyſhip to go to the Drumſheugh ſchool for her daughter, was Miſs Helen Thomſon; and alſo admits, that it turns out on inquiry that Miſs Thomſon received her information of the allegations againſt the purſuers, which induced her to give this advice, from Mrs Kennedy of Dunure, who again derived her information from Mrs James Dundas; and farther, that in conſequence of the information ſo given to her, Miſs Thomſon removed two young ladies who were under her charge from the ſchool; and theſe admiſſions are now made and received, ſolely with the view of rendering it unneceſſary to examine the ladies above referred to as witneſſes in ſo delicate an inveſtigation: And with the ſame view, Mr Erſkine, on the part of the defender, alſo admits, that it was from the defender that Mrs Forbes, who is her daughter, firſt received information of the allegations againſt the purſuers before referred to, and which are thoſe that have given riſe to the preſent action.

On the other part, Mr GILLIES, for the purſuers, admits it as a fact, that Mrs Kennedy and Mrs Forbes are on habits of viſiting each other.

Thereafter, GILLIES, for the purſuers, begged to mention to the Lord Ordinary, that both Mrs Elizabeth Hamilton and Mrs General Campbell, witneſſes examined in this cauſe for the purſuers, had, ſince their examinations, ſent to the counſel and agent for the purſuers,

A fuers, explanations regarding their depoſitions, which they had expreſſed a wiſh might be ſtated to the Court: That theſe were contained in a letter from Mrs Hamilton to Mr Clerk, one of the counſel for the purſuers, dated 30th March 1811, and in a letter from Mrs General Campbell to the purſuers' agent, dated 25th
8 April 1811, and certificate by Mrs Campbell of ſame date, ſent inclofed in that letter: That he now produced theſe letters and certificate to the Lord Ordinary, to whom it had been remitted to take the further proof in this cauſe, for the purpoſe of their being brought under the view of the Court, in terms of the deſire of Mrs Hamilton and Mrs General Campbell, and alſo of their being permitted to form part of the proceſs, and be included in the ſtate of it now preparing.

CRANSTOUN, for the defender, *anſwered*, That although it ſeems
D quite incompetent for a party who has been allowed a proof by witneſſes of particular facts, after having examined witneſſes, to produce letters or certificates from them explanatory of, or in addition to, the depoſition emitted upon oath; yet as the defender has no deſire to circumſcribe the purſuers in any mode of proof they may think it of importance to bring forward, ſhe makes no
E objections whatever to the letters and certificate produced along with the minute for the purſuers, being received as part of the proof, and being included in the ſtate now preparing.

F LETTER, Mrs ELIZABETH HAMILTON, addreſſed to JOHN CLERK, Eſq; Advocate, dated 53. George Street, March 30. 1811.

G SIR,

As I cannot but be extremely anxious, that my depoſition ſhould be ſcrupulouſly correct, I have reflected with ſome uneaſineſs on having ſaid the term *irritable* in giving my opinion of Miſs Pirie's temper, as I fear it may convey an idea different from that which I meant to expreſs.

H If permitted to explain myſelf more fully, I ſhould ſay, that the irritability to which I alluded did not ſhew itſelf in being eaſily provoked to anger, or in impatience of contradiction or controul, but was diſplayed in *a highly-excited ſtate of feelings*, where any thing occurred to call forth her cenſure, diſlike or diſapprobation

on

on ſuch occaſions, (though only with regard to the faults incident to childhood,) her imagination exaggerated the circumſtance into a cauſe of real vexation, ſo as to agitate the whole frame of her mind. This gave her the appearance of ſeverity; yet in her conduct to her pupils, ſhe was not ſevere, at leaſt not ſo much ſo as to prevent her from conciliating their affection.

I am deſirous that this explanation ſhould be communicated to the Judges; and if their Lordſhips think proper that it ſhould be attached to my evidence in the form in which I take the liberty of addreſſing it to you. I have the honour to remain, with much reſpect, Sir, &c.

LETTER, Mrs GENERAL CAMPBELL of Strachur, addreſſed to JAMES BALFOUR, Eſq; Writer to the Signet, dated Edinburgh, 25th April 1811.

SIR,

At the time I was called on to give evidence regarding Miſs Pirie's character, I was in very great diſtreſs, owing to a young perſon who had lived with me from infancy, being at the height of a dangerous fever; that circumſtance would at any time *unfit* me for any thing; and when you take into conſideration, that though I am now an old woman, I never before took an oath; that I am deaf, and that through life I have ever had a degree of timidity that I never could ſhake off, it will account to you for any embarraſſment or ſtupidity that may have appeared when I was taken before that (to me) formidable Court. I am ſenſible that I did not do Miſs Pirie the juſtice ſhe deſerves. and had an undoubted right to expect from me, though I can declare ſhe never told me ſo. I ſhall now ſtate to you, Sir, my candid opinion of her, which I am willing to ſwear to again, if you conſider it neceſſary, but beg you will not take me before ſuch a number of people again. I alſo beg leave to add, that though I never had a family of my own, yet I have had the charge of young people for twenty years; and during that time have had ſeveral governeſſes in my family. I never had any one that I would prefer to Miſs Pirie. I hope, Sir, you will forgive my giving you this trouble; but in a very ſhort time I ſhall leave town, and I feel very anxious before I go home, to be of all the uſe I can to Miſs Pirie. I am, Sir, &c.

CERTIFICATE, Mrs GENERAL CAMPBELL to Miſs PIRIE, inclosed in the foregoing Letter, dated Edinburgh, April 25. 1811.

A I hereby declare, that during the two years Miſs Pirie lived in my family as governeſs, I obſerved her conduct moſt attentively. As the girls under her care were at the age of thirteen and fifteen. I was very anxious that her morals ſhould be ſtrict. I can declare, that I always conſidered her a ſtrictly religious, ſince e good
B Chriſtian, and the moſt indefatig ble teacher I ever met with. I felt poſitively convinced, that they were ſafe in her hands from all evil whatever, and that they were made to attend to their education. The improvement they made during the time they were with her was viſible to every perſon intereſted in them, and the
C impreſſion ſhe gave them of a future ſtate, I hope will remain with them through life. In regard to that violence of temper which I have of *late* heard ſo *much*, I never ſaw it appear but when ſhe met with provocation. I ſhall admit, that on theſe occaſions ſhe uſed to expreſs herſelf with a keenneſs that every woman had
D better let *alone*. The great fault I ever had to Miſs Pirie, was too great warmth of feeling, which proceeds from an ardent temper. On this point we differed often, and I did all I could to keep it under, and to prevent her pupils imbibing any of it. Her attachment to Miſs Woods appeared to me to be *enthusiastic*. I alſo endeavoured
E to correct that, but it would not *do*. She thought a reſidence with Miſs Woods was to make her a much wiſer and a better woman, and told me ſo. Miſs Pirie has lived to ſee the folly of all that nonſenſe, and to feel the conſequence of it, and I have no doubt that ſhe will now be a much more deſirable preceptreſs for youth
F than ever ſhe was. Before her misfortunes came, I had determined to place my youngeſt niece at her ſchool, and alſo a granddaughter of my late huſband's; both of theſe girls are at the age of ſixteen. I think I cannot give a ſtronger proof of the high opinion I had of her, than that; and I ſhall take this opportunity to
G declare, that I have a high opinion of her *still*; and, great as the odium is that has been caſt on her, I would, without heſitation, place a child of my own under her charge. In regard to the children of others, the feelings of thoſe nearly connected muſt alſo be conſulted; but I have no reaſon to doubt, did ſhe again
H open a ſchool, ſhe would ſtill get them as boarders. During Miſs Pirie's reſidence with me, ſhe was afflicted with rheumatiſm in her limbs and back, and was frequently rubbed for it.

WRITINGS produced for the Purſuers.

1. CARD Lady CUMMING GORDON to Mrs General ANSTRUTHER. Dated 'Wedneſday evening,' (November 14.)

Lady Cumming Gordon preſents beſt compliments to Mrs An- A
ſtruther. She thinks it right to inform her, that ſhe has found it neceſſary to-day, for ſerious reaſons, to take away her grandchildren from Miſs Woods' and Miſs Pirie's ſchool. As Lady Cumming recommended the ſchool to Mrs Campbell, for Miſs Anſtruther, ſhe wiſhes to give her the earlieſt information. Lady Cum- B
ming ſent for her children home, without aſſigning any reaſon, but a wiſh to have them home; and ſhe will call, and give Mrs Anſtruther her reaſons for what ſhe has done to-morrow.

2. CARD from Lady CUMMING GORDON to Lady CUNYNGHAME. C
Dated 'Thurſday evening,' (November 15.)

Lady Cumming Gordon preſents beſt compliments to Lady Cunynghame, and begs to inform her Ladyſhip, that ſhe has, for very ſerious reaſons, taken her granchildren from Miſs Woods and Pi- D
rie's ſchool. As Lady Cumming was one of thoſe who recommended the ſchool to Lady Cunynghame, ſhe feels it her duty very ſtrongly to adviſe her to the ſame meaſure, *as ſoon as poſſible.*

3. CARD Lady CUMMING GORDON to Miſs WOODS. Dated 14th]
November 1810.

Lady Cumming Gordon preſents compliments to Miſs Woods and Miſs Pirie. She will be obliged to them to ſend her a ſtatement of the Miſs Dunbars and Miſs Jane Cumming's accounts; as, from Lady Dunbar's intending to come up immediately for her children, Lady Cumming does not find it convenient to allow them to return to ſchool any more. She will likewiſe be obliged to them

A them to ſend in Miſs Jane Cumming's clothes, with the Miſs Dunbars' books, muſic, &c.

4. CARD Miſs Woods and Miſs Pirie to Lady Cumming Gordon. Dated 14th November 1810.

B Miſs Woods and Pirie beg leave to addreſs Lady Cumming Gordon. There has been ſome delay in the execution of her Ladyſhip's commands; but, as ſoon as poſſible, they will be attended to. The extreme anxiety of mind they are in, can alone excuſe the earneſt entreaty they now make to her Ladyſhip, that ſhe will
C candidly ſtate to them every particular circumſtance which has occaſioned her Ladyſhip's diſapprobation, and by its conſequences ſeems to threaten their total ruin.

(*N. B.* To this card no anſwer was returned.)

D 5. LETTER Miſs Jane Pirie to Miſs Mary Cumming, ſecond Daughter of Lady Cumming Gordon. Dated 16th November 1810.

If ever you expect mercy from the God of mercy, tell what your niece has ſaid to injure two innocent perſons, who have laboured
E for nearly twelve months to improve her in every religious and moral virtue, and who are thus cruelly repaid by her. We never did any thing to offend her, excepting too rigidly diſcharging our duty towards her, and too freely telling her of her faults. You are again implored, for the ſake of that God from whom you hope for mercy, to tell us of what ſhe accuſes us, as the calumny has
F been traced to her, and ſhe appears to be the ſole author of it. If ever Chriſtian mercy or pity had a place in your heart, do not delay to ſtate *all* ſhe ſays againſt us, as every hour's delay increaſes the miſery ſhe has already occaſioned.

(Signed) J. Pirie.

G (*N. B.* To this letter no anſwer was returned.)

6. CARD Mrs General Dirom to Miſs Pirie. Dated Queen Street, Saturday.

H Mrs Dirom's compliments to Miſs Pirie. Mrs Nichol's character of her is quite ſatisfactory; and if Miſs Pirie is ſatisfied with the

the terms Mrs Dirom propoſed in her laſt note, Mrs D. reckons the matter as ſettled between them.

7. LETTER Mrs General DIROM to Mrs RICKSON. Dated 'Queen 'Street, Saturday.'

MADAM,

I ſtill certainly feel much regret at parting with Miſs Pirie, who has conducted herſelf very much to my ſatisfaction, and done every duty to my little ones. At the ſame time, were it even in my power, I hope I would not be ſo unjuſt as to wiſh her to ſtay, when the going home, to complete herſelf in the branches of education ſhe has not yet had opportunity to do, will certainly, in future life, be greatly to her advantage. I remain, &c.

(Signed) M. DIROM.

8. LETTER ISABELLA HILL to Miſs MACFARLANE. Dated 'Hope 'Street, November 27.'

My Dear Madam,

I have this morning had a letter from Miſs Hamilton, from which I ſend you the following extract, in anſwer to our inquiries about Miſs Pirie: 'I am happy to find, that Miſs Pirie has the pro-'ſpect of getting into a ſituation, where her abilities as a teacher 'will be juſtly appreciated. I, from my own experience, have 'reaſon to think of them very highly. Whatever ſhe profeſſes to 'teach, ſhe teaches thoroughly. Her endeavours to facilitate the 'progreſs of her pupils are unremitting, and conſequently ſucceſs-'ful. To her character and conduct I can likewiſe bear the moſt 'ample teſtimony. Nor, though her temper is ardent, did I ever 'find, that it ever hurried her into impatience. In all that related 'to her pupils, I found her always willing to receive advice, and 'to follow any plans that I ſuggeſted; and, in a word, that ſhe 'conducted herſelf truly to my ſatisfaction. With ſuch a mother 'as you deſcribe Mrs Grant Macdowall to be, I ſhould not ſuppoſe 'that young ladies would require more from a governeſs than Miſs 'Pirie can aſſuredly beſtow.'

With beſt regards to Miſs Margaret, I am, with eſteem, yours, &c.

(Signed) ISABELLA HILL.

A 9. LETTER Mrs MACDOWALL GRANT to Miſs FARQUHARSON, York Place. Dated Arndilly, 7th September 1807; with Rothes Poſt mark thereon, 11.—1807.

MADAM,

B I received your letter of the 30th Auguſt only yeſterday, and beg leave to inform you, that I have the higheſt opinion of Miſs Pirie's capacity as a governeſs, and her exertions for her pupils' inſtruction and improvement are conſtant and unwearied. She is a capital Engliſh ſcholar; has a competent knowledge of the French C language, and has brought on my young people extremely well in writing, accounts, geography, muſic, drawing, &c. My only reaſon for parting with Miſs Pirie is, that my eldeſt daughter's education being finiſhed, I no longer intend to have a governeſs; and as I am much intereſted in her, I feel very anxious for her obtaining a good ſituation. I am, &c.

D (Signed) M. MACDOWALL GRANT.

10. LETTER Mrs MACDOWALL GRANT to Miſs HALL, Baxter Place, Edinburgh. Dated Arndilly, 21ſt September 1807; with Rothes Poſt mark; date effaced.

E

MADAM,

I received your letter of the 15th, yeſterday. With regard to your inquiries reſpecting Miſs Pirie, I beg leave to inform you, that I have a high opinion of her abilities as a teacher. Her exF ertions for her pupils' inſtruction and improvement are conſtant and unwearied, and ſhe has ever maintained a proper authority over them. Miſs Pirie's language and pronunciation are uncommonly good. She is a capital Engliſh ſcholar, and has brought on G my young people extremely well in French, writing, accounts, geography, muſic, drawing flowers, &c. Miſs Pirie has been with me near two years, and my reaſon for parting with her is, that my eldeſt daughter's education being finiſhed, I no longer intend to have a governeſs, and I feel very anxious for Miſs Pirie's obtaining a good ſituation. I am, &c.

H (Signed) M. MACDOWALL GRANT.

11. CERTIFICATE by Mrs General CAMPBELL. Dated Edinburgh, December 12. 1810.

Miſs Pirie lived in my family as governeſs two years; during which period ſhe behaved moſt unexceptionably. I conſidered her

both

both with reſpect to religion and morals, *perfectly* qualified for the charge of young people. Her exertions for their improvement were unremitted; and her abilities as a teacher, has already been vouched for, by much better judges than I am; therefore, any thing I could ſay farther is of no importance. She left me to take up a ſchool, and *I*, on the *childrens'* account, parted with her with *very great regret*.

(Signed) HELEN CAMPBELL.

12. LETTER Miſs PIRIE to Miſs WOODS, with the preſent of a Bible. Dated October 12. 1810.

Accept, my beloved, of that Book, which can give conſolation in every ſituation; and, deareſt *earthly* friend, never open it, without thinking of her who would forego all friendſhips, but her God's, to poſſeſs yours.

Ever your own,

(Signed) JANE PIRIE.

13. LETTER Miſs WOODS to Miſs PIRIE, propoſing ſeparation. Dated October 1810.

MADAM,

I have been made deeply ſenſible of my error, in ſuppoſing that buſineſs might be tranſacted between thoſe who are termed friends, in a different manner from that in which it muſt be ſettled between dec'ared foes. I am willing, at preſent, to ſhare the blame of this overſight with you; but its conſequences, which fall on me with an overpowering weight, I ſhall ever deplore. It is an old ſaying, but its veracity is the more to be truſted on that account, that it is needleſs to look back on the paſt. The experience I have gained from it, however, teaches me to prepare for the future; on that ſubject, therefore, I principally wiſh to addreſs you.

I think I have heard you expreſs as much anxiety as I may have done, to be able (without acting diſhonourably) to withdraw from an aſſociation ſo unproductive of any beneficial effects as ours appears to be.

It is ſcarcely neceſſary to add, that I now wiſh to propoſe certain terms, on which I would willingly retire at a convenient ſeaſon, from a ſituation which I find ſo contrary to all comfort and advantage; and I ſhall be glad to know your opinion on the ſame ſubject.

The

A The Whitſun term I ſuppoſe the moſt convenient time for ſeparation.

All the furniture, which has been mutually paid for, ſhall either be diſpoſed of by public auction, and the profits equally divided, or the party withdrawing ſhall receive her ſhare of the ſum they
B originally coſt, as may be agreed upon. Three months notice ſeems ſufficient intimation of an intention of withdrawing, and I ſhould not conceive it honourable to give a hint of ſuch intention to any one previous to that period.

I do not recollect any other neceſſary conditions at preſent, but
C offer theſe to you for improvement and addition.

There are alſo a few particulars, abſolutely requiſite in my opinion, to the ſupport of buſineſs, even till the firſt opportunity of giving it up.

I have become ſo far reconciled to your ſyſtem of rigid ſepara-
D tion of intereſts, and diviſion of employments, in every particular which relates privately to ourſelves, as even to require a much more ſtrict adherence to the conduct it preſcribes than you frequently pay. Where it militates materially againſt my comfort, I muſt obviate it as well as I can; but with regard to the young
E ladies committed to our care, I require that all the pupils ſhould be governed by the ſame rules,—ſerved with the ſame accommodation,—treated with equal attention, and in every reſpect taught to conſider themſelves as members of one family, ſince diſcord and diſcontent muſt be the conſequences of different treatment.

F On thoſe Wedneſdays when I muſt ſit with Mrs Seward, I think the buſineſs of the houſe requires your preſence as well as mine.

In exchange for thoſe papers of mine which you burnt, I require every note and letter to be returned, which I unfortunately addreſſed to you.

G I requeſt to have an early anſwer to theſe requiſitions, which appear to me indiſpenſibly neceſſary to even the ſhow of a good underſtanding between us. And am, &c.

(Signed) MARIANNE WOODS.

H 14. ANSWER Miſs PIRIE to Miſs WOODS' Letter on the ſubject of a ſeparation, without date.

I ſhall defer anſwering the greater part of your laſt production, till *full* conviction of your ſacrificing me to fame, intereſt, &c. &c. enables me to adopt thoſe ſentiments and reſolutions which *muſt* follow. I readily agree to every thing you propoſe, or, in your mode

mode of expreſſing, requeſts *(require)* relating to the young ladies, A
and ſhall ever regret, that your thirſt after fame and ambition for
pre-eminence ſhould have produced the diviſions you complain of.
I appeal to God for the truth of this aſſertion, that I never wiſhed
for a ſeparation of intereſts or employments; but I conceived my-
ſelf ſelfiſhly, diſreſpectfully, and unkindly treated. If my judg- B
ment has miſled me in forming my opinion of your actions and
Mrs Woods', may the Almighty pardon my injuſtice; but if they
are not deſtitute of *foundation*, may his mercy be extended to her,
who could voluntarily ſacrifice her confiding friend to the comfort
or PRIDE of any human being. God ſees all hearts, and he knows C
that I was willing to ſacrifice every thing on earth for her who
profeſſed herſelf my *friend*. You know the line of conduct you
meant to purſue in reſpect to Mrs Woods and me, ſo muſt have
proffered the ſacrifice at a time when you declared ſincere love and D
friendſhip for your too credulous friend, as your ſyſtem of eſtabliſh-
ing Mrs Woods, in oppoſition to my intereſt, has uniformly been
purſued, ſince the very *commencement* of the plan. I ſhall inform
you three months before I quit this abode of miſery; but this is all
you can reaſonably expect from me. The papers I unfortunately
received ſhall *never* be left toſſing about for any one's peruſal, as E
you left mine, but ſhall either be returned, or conſigned to the
flames, when all doubts are fled of your motives in reſpect to me.

(Signed) JANE PIRIE.

15. ANSWER Miſs PIRIE to a ſecond letter from Miſs WOODS, on F
the ſubject of a ſeparation; but which ſecond Letter has not been
preſerved, without a date.

I received your epiſtle, and return you many thanks for your at-
tention in ſending it on an evening, when you knew it would be G
doubly pleaſant. I ſhall oblige you to conſider me as your *equal*,
although you have worked hard to bring me from *respectability* to
a ſituation I conceive *contemptible*. I ſhall never eſtabliſh myſelf
by degrading *you* in the eyes of the world, nor by *diſhonourable*
means eſtabliſh myſelf head of the concern, and 'Lady of this H
'houſe,' &c. having no ſuch *mean* intentions. I heartily agree to
have every thing ſettled by a man of buſineſs, and to adhere to
every thing he thinks juſt. Every ſtep that can be taken muſt be
in *my* favour, as you have been a complete 'free will agent' from
the beginning. Draw out your terms of agreement, and I will I

 mine,

mine, and let both be submitted to any two persons we may appoint. I trust the Almighty may enable me to be indifferent to a person who has proved herself *unworthy* of the confidence I placed in her, and make your *selfish* conduct a means of making me trust to him alone.

(Signed) JANE PIRIE.

16. LETTER Miss WOODS to her Sister Mrs TINDALL, in London. Dated Drumsheugh, 9th September 1810; with the London Penny Post mark thereon; 7 o'clock.——1810.

MY DEAREST SISTER,

Your kind and truly affectionate letter has almost put me in good humour with *myself*, and as I know you do not expect to hear from me in haste, I make one more venture with private hands, through the medium of Mrs Seaward, our dancing-mistress, whose husband is in London. I am quite happy at dear little Marianne's recovery. You will have had so much experience by this time, that I hope you will not suffer so much from fear again, as I have seen you when she changed countenance the least in the world. How many more infantine complaints and disorders has she still to undergo! I often wonder, how the tender frame of an infant can support the violent attacks made upon it in so many ways; and yet it is better to have them over, than to live in dread of infection.

One of our day-boarders took the hooping-cough, when she had been with us a fortnight, and gave it her brother. She was about fifteen, and he eighteen. I heard of an old gentleman and lady, upwards of sixty, who took it together last winter, which was, you will own, truly conjugal and sympathetic. They are all well now, but it was very severe upon them.

I should like to have been with you in your excursion. The summer has been particularly fine in the north, &c. I suppose yours has been *superfine*. I was twice in the sea only, and wish I could have been oftener, for it is a fine bracer, and I do not do any credit to the house at present, I am sure, for I am as black and yellow as an old boiled bean, and as thin as an empty purse.

The scheme itself is most successful. We expect three more night-boarders this year, and we shall then have all our number but *one*; so that very little is wanting, one would think, to make it a satisfactory scheme to its promoters. Whatever that little is, it has been wanting from the beginning, and nothing, in my opinion, will ever make up for it. Every one will learn from experience,

rience, if from nothing elſe; and, my deareſt ſiſter, if I were now A
to enter into any concern of any kind, with *even* you, I would
have the particulars ſet down in black and white, as if I had ne-
ver ſeen nor heard of you before; which may be Engliſhed thus,
as if I had ſeen you guilty of the moſt diſhoneſt practices, and
heard the vileſt reproaches of your temper and diſpoſitions. Aſk B
Mr Tindall if this is not the ſafeſt way of doing buſineſs; for pre-
cautions do no harm if uſeleſs, and, if neceſſary, all parties are ſe-
cure; but I deſpiſed all obligations but the dictates of honour and
regard, and theſe miſled me. If things take the turn I expect they
will, I will certainly ſee you next ſummer; but what that turn is, C
I forbear mentioning, till I am more aſſured I am right. I have
ſaid nothing of my aunt in this myſterious buſineſs, becauſe I
dread even to think on the ſubject. You will hear from me again
ſhortly reſpecting her; but, pray, write ſoon again yourſelf. Give
my beſt love to Mr Tindall. I wiſh much to know what he pro- D
poſes on leaving Perceval Street. I ſhall be ſorry at your leaving
that pretty houſe. I have not had any accounts from Sutton
Street in anſwer to my letters. I hope they are all well. Give
my love and duty to my dear father and mother, and tell them, I
had a ſhort letter from Helen Shepherd ſome days ago, by the E
penny-poſt. I ſuppoſe the gentleman ſhe gave it to, was afraid of
attacking a boarding-ſchool. Beſt love to Maria, George, and
John, and to William; to Mrs Tindall, when you ſee her; to my
aunt and her daughters, and couſins, and all friends. How does
George come on, and his new little wife? I hope Mr Tindall's re- F
turned, and that he will ſoon give me a letter full, for I want
ſomething to raiſe my ſpirits, and by endeavouring at that, he
would do ſome good to his own. I ſhall not forget to pray for
many happy returns of the 23d of this month. Mrs Bird was aſk-
ing about you the other day; and ſo was Mrs Rock; the latter G
expects to be in London the latter end of this month. I remain,
dear ſiſter, yours, &c. (Signed) MARIANNE WOODS.

17. LETTER Miſs WOODS to her Siſter Mrs TINDALL. Dated Drumſheugh, September 24. 1810; with London Poſt mark thereon, effaced.

MY DEAREST SISTER, H

I hope you received a ſort of letter I ſent, along with one for Mary Clendinning, by a private hand. I promiſed in it to write again

again ſoon, as you would plainly perceive ſome circumſtance had ariſen, of ſuch a nature as to irritate and grieve me.

It is, then, my deareſt ſiſter, no other, than that my aunt and Miſs Pirie are on ſuch terms, that the former cannot ſubmit to continue in the ſame houſe. Can you conceive the ſtate of my mind? I feel that I have brought her into the ſituation in which ſhe has received ſuch unworthy treatment; and though I know that I imagined I was ſecuring her comfort and my happineſs, by bringing her to it, yet I reproach myſelf as much as if my intentions had not been ſo good.

What aggravates my uneaſineſs is, that I feel a total inability to be of the leaſt ſervice to my aunt. She is to go, and to take her furniture away on the 25th of November. We have of courſe every thing to replace; but that I don't mind. I wiſh I did not mind either the blame which I am liable to, and which will be largely beſtowed by the idle, ill-minded, and thoſe who envy my ſucceſs, for the apparent want of duty and affection in ſeparating myſelf from my aunt. But I know this; that if my aunt and I had accepted an offer to keep the concern ourſelves, and let Miſs Pirie go, the whole circle of *her* well-wiſhers and acquaintances, (which is not a ſmall one, and which would have been extended by every poſſible aſſiſtance), would have been fully charged with reports, that my aunt and I had made uſe of her the firſt year and half, while money was wanted, but as ſoon as the ſcheme was becoming profitable, ſhe was turned out. We could not have contradicted the fact of her being gone; therefore every thing ſhe choſe to ſay would gain belief, and we ſhould both (my aunt and I) be thought artful, arrogant, and undeſerving. As it is, my aunt will be unuſually compaſſionated, except by Miſs Pirie's cloſe intimates, and the blame will fall on me and Miſs P. I don't know whether it will affect the ſchool or not. I am determined to give no aſſiſtance to the houſehold-management, let it be ever ſo bad; ſo ſhe may hire a houſekeeper, or let the ſervants waſte, I don't care about it; it muſt go on till May, and I am not at all determined what to do then. I am too much agitated to write on this ſubject, (as well as too much hurried alſo,) to any one elſe; but this will enable you to give information to my father and mother. I ſhould be very glad to hear what they and Mr Tindall think of the buſineſs.

I am anxious to know how Marianne and you are, as well as about my own buſineſs; ſo pray do not delay writing at full length. My beſt love to Mr Tindall, and tell him, I am ſorry to perceive

perceive by your laſt, he is angry at me. Beg of him to be good- A
natured again, for I do not require any thing to vex me more. Beſt love and duty to father and mother; love to Mary and John; alſo to William and George, when you ſee them. Remember me in the kindeſt manner to Mrs Tindall and her daughter. Oh, deareſt ſiſter, when ſhall I ſee you again? Your anſwering me B
ſoon will be truly kind. Your ever affectionate ſiſter, &c.

(Signed) MARIANNE WOODS.

18. LETTER Mrs MARTHA TINDALL to her Siſter Miſs MARIANNE WOODS. Dated London, 3d October 1810; with Poſt mark thereon, much effaced.

C

My deareſt Siſter,

Yours, dated September 9th, made me anxiouſly look forward for another; but I need not tell you, yours of the 24th made me particularly uneaſy. I did expect ſomething very unpleaſant had ariſen to make you uncomfortable; but had no idea of it being of D
ſuch a very ſerious nature as it has turned out to be. But, my dear Marianne, for heaven's ſake, for your affectionate ſiſter's ſake, do not fret in the manner I plainly ſee you do. You are young, and have, I hope, many, very many years yet to live; then do not undermine your conſtitution in the manner you are doing; think E
of yourſelf, and that which you think will make you feel moſt comfortable. Can nothing be done? for I dread a ſeparation taking place between my aunt and you. By your interfering, would not aunt ſtay till May, and in that time ſomething might be done; otherwiſe, cannot you leave it with her in Novem- F
ber? I think you might both be ſettled much more to your minds by the new year. I've no doubt, when my aunt leaves, ſhe intends coming to London. But, for heaven's ſake, write to me again very ſoon, and, at the ſame time, hide nothing from me pray. I ſhould have wrote to you ſooner, but have been very bu- G
ſy. We have let our houſe and ſhop, and ſold the ſtock; but not wiſhing to move this winter, we have taken the firſt floor and the kitchen. Tindall is obliged to work in the kitchen, therefore I am very much confined for room; but, upon the whole, much more comfortable than I was before. He ſends his kindeſt love, H
and will write to you very ſhortly. I ſuppoſe you will hear ſoon from father; they are inclined to blame the party I cannot help thinking quite innocent. I feel for you, my dear, on every ſide, how it muſt hurt you to find yourſelf ſo groſsly deceived by one you thought your beſt and moſt dear friend. You do not com- I

 plain,

A plain, but I feel pretty certain ſhe has you completely under her thumb. I muſt ſeal this immediately. Pray write ſoon. Is Mr Rock in London? I have not ſeen Mrs K. ſince I wrote laſt, nor any of them; but I ſhall call there on Monday. All that you know here are quite well. Tell me in your next, I may give you
B a kiſs on the 1ſt day of December, and I will bleſs you. Remember me in the kindeſt manner poſſible to aunt, and accept from me the love of your little niece. God bleſs you in all your undertakings. My dear dear ſiſter, &c.

(Signed) MARTHA.

C

19. LETTER Mr G. TINDALL to his Siſter-in-law Miſs M. WOODS, but addreſſed to Mrs WOODS. Dated London, November 20. 1810; with Poſt mark thereon, effaced.

D My dear Siſter,

Had I been at home when your letters came, you ſhould have heard from me by return of poſt; but as I did not ſee them till ſix o'clock in the evening, that is all I need ſay. I went immediate-
E ly to ſee Mr Keating, but was not ſucceſsful. I ſaw him this morning in bed, being unwell, and had half-an-hour's converſation with him. He ſeemed to feel much for your truly unhappy ſituation, and was much enraged, as every one muſt be, at the cauſe of your multiplied grief and wretchedneſs. He requeſted I ſhould write
F in ſtrong terms concerning Miſs Pirie; but I know my dear ſiſter's feelings are too much wounded, to be applied too harſhly, though even her own intereſt is ſo much at ſtake.

Mr Keating ſtrongly recommends you not to give up, but by every energy you are poſſeſſed of, to reſiſt the invidious attempts
G of one ſo truly unworthy to reap the benefit of your anxiety and aſſiduity. He ſays, if 'tis poſſible that it can be carried on longer jointly, endeavour by every means in your power to compel Miſs Pirie to leave, and fear not what may be ſaid or done. With re-
H ſpect to tranſlating, he ſays, there is not the ſmalleſt proſpect of your ever getting ſufficient to keep you in ſhoes, being moſt miſerably paid for, and, indeed muſt be done by men. It appears to him, that nothing would be ſo eligible as a teacher or governeſs. He further obſerved, that he thought Miſs Reid's brother, toge-
I ther with your other friends, might be of ſome ſervice in adviſing you how to act for the beſt, under ſuch afflicting circumſtances: ſo far I have endeavoured to give you Mr Keating's opinion as brief as poſſible. I wiſh I knew how to give you my own with

any

any degree of correctneſs. In the firſt place, I deny your aſſer- A
tion, that you are driven from your ſituation, and diſgraced. Dri-
ven from it you may be, but as long as every ſocial virtue is
eſteemed, you never can be ſhook in the high eſtimation you are
held by all your friends:—What, becauſe your noble, unſuſpect-
ing diſpoſition, formed an attachment to one whoſe education and B
whoſe youth, and perhaps a number of other conſiderations, fairly
warranted you in doing all you have done, I ſay, to the full ex-
tent of all your engagements, what could the moſt rigid cenſurer
ſay? Only that you judged, that the ſame feelings which actuated
you, actuated your friend, and that you have been greatly deceived, C
and that it is much to be deplored; but ſure no one can be ſo un-
juſt as to reproach you. I feel much for your aunt, and know
you do as much as one human being can for another, and would
teſtify your gratitude and affection for her in every way you could
poſſibly think ſhe could wiſh, and ſhe knows it too; and I am ſure D
Mrs Woods, though doubtleſs at preſent is much diſappointed and
hurt in her mind, from the treatment ſhe has received, will, the
more ſhe reflects, pity you, being convinced, that your moſt poi-
gnant feelings is on her account. With reſpect to your coming to
London, what ſhall I ſay? I will only refer you to that part of E
my laſt where I recommended perſeverance and exertion to *cope*
with your *adverſary*, and then leave you to do as your better
knowledge of all your circumſtances ſhall direct you; for I would
not ſay a word that I thought you might conſider ill-timed, or for- F
get for a moment, from the extreme painfulneſs of your ſituation,
how devoutly you muſt wiſh to relieve yourſelf from it at any
rate. But, whatever you may determine, don't loſe ſight of your
juſt right, even to the very farthing, I mean as it reſpects Miſs Pi-
rie; as, whatever may be your future purſuits, you will find mo- G
ney very ſerviceable. Pardon my plainneſs, my dear ſiſter,
though young, I know the world well. I have ſuffered more than
Marianne Woods has any conception of; and I may ſay truly,
with yourſelf, that it has not been owing to my own miſconduct.
I care not what your other friends may adviſe you; but my advice H
is, if you cannot purſue the ſame profeſſion any longer without ſa-
criſicing your peace of mind, come to London, where I doubt not
but fortune will ſmile upon you, and where we ſhall have an op-
portunity of proving, more than we can at preſent, that we are,
and ever ſhall be yours moſt unfeignedly. I

If there is any thing my dear ſiſter thinks I could ſerve her in,
pray write by return of poſt; depend upon it I ſhall not think you
troubleſome,

A troubleſome, but rather think you doubted my ſincerity by holding off; at all events, write in a few days. Our beſt love to your aunt, &c. &c. &c. I ſaw James Rock laſt night at Mr Keating's; he is very well, and begs to be remembered to you. Adieu, God bleſs you.

(Signed) G. TINDALL.

B 20. LETTER, Mrs MARTHA TINDALL, to her Siſter Miſs MARIANNE WOODS. Dated London, 26th November 1810; with Poſt mark thereon, much effaced.

My beloved Siſter,

C I take up the pen, yet have very few words to ſay. Let me entreat of you to come to London as ſoon as poſſible, and not by ſea. I know not what Tindall has wrote; I did not know what had happened till after his letter was gone; but I am ſure you may do very well here. You know there will be many opportu-
D nities offering at Chriſtmas of different kinds; and why ſhould not you ſucceed?

I fully expected a letter from you to day, but am terribly diſappointed. Pray write, and be more explicit concerning what has happened, and the ill treatment you have met with; and pray in-
E form me of the ſooneſt time you think your affairs will allow of your leaving Edinburgh; for I ſhall not be happy till I ſee you. How is aunt? I dare ſay this is not a great ſurpriſe to her; although, am ſure ſhe muſt be much hurt at it. What is not one evil diſpoſed perſon capable of doing? though we are in the dark
F as to what in reality has occurred, and therefore can only gueſs or imagine, and we may be entirely wrong in our ſuppoſitions. However, my dear Marianne, keep up your ſpirits, and haſten as much as poſſible your departure, for I ſhall be miſerable till I once more behold you.

G Who was it, my dear, that informed you of my *preſent* ſituation, for I wiſhed you particularly not to know of it, not through any unkindneſs, but I knew the whole of the time ſince you left London, you have had enough of your own to make you unhappy, without being made ſo by others, for I was ſure you would feel
H for me. I expect to be confined about the ſame time. I was with Marianne, but hope, long ere that, to have the pleaſure of my dear dear ſiſter's company.

I ſuppoſe, as aunt has taken a houſe, ſhe will not think of coming with you. Remember me kindly to Mrs Bird, &c. &c. You will

will find little Marianne quite engaging. Our kindeſt love to my aunt; and accept the ſame yourſelf. My dear ſiſter, yours, &c. A

I hope I ſhall not be kept in this ſuſpence till next Monday.

(Signed) MARTHA.

21. LETTER, MARGARET, to her Siſter Miſs PIRIE. Dated Glaſgow, 31ſt October 1810; with Poſt mark thereon, much effaced. B

My deareſt Jane,

I am extremely ſorry that you ſhould be ſo unhappy. I think you have no reaſon to fear any harm, were you once quit of that C
deteſted woman; her machinations againſt you muſt ceaſe when ſhe leaves you. I am unwilling to ſuppoſe that Miſs W. will behave wickedly when her aunt is removed from the houſe; but I do not like that ſhe ſhould be ſo ready in quarrelling; ſhe muſt have motives for that I think, and I truſt, my dear Jane, you will D
be aware of her whatever provocation ſhe may give you; nor forget yourſelf for a moment. She may be thinks, that by making your life unhappy, that you will rather leave the *concern*, and then ſhe will join her aunt again; but my dear Jane, I entreat of you to
be ſteady, and ſtick by the ſchool. To get you to relinquiſh it, is L
perhaps all ſhe aims at; but I would diſappoint her in that. You have many who will ſtand your friend; and from all I can learn, I think if Miſs W. would alſo leave the concern, it would be infinitely in your favour; but for Godſake do not you give it up after you are ſo well eſtabliſhed. I really think, my dear Jane, after F
the way ſhe has behaved, you cannot live in happineſs with her, and you may depend, that every viſit ſhe makes her aunt, you will have freſh cauſe to diſlike her; but I truſt God will direct you to ſhun the ſnares ſhe may ſet for you. Do, my dear Jane, write me G
ſoon, and tell me how you are coming on; it makes me very uneaſy to think you are among ſuch a ſet. I am glad to hear poor Phemy has at laſt got quit of the tube. I hope her eye is entirely whole; and my poor aunt is no better poor ſoul. God grant her patience and reſignation; give my beſt love to them both. Mr H
Hamilton the clerk is diſmiſſed; but Tam has not got the office, as Mr Jardine told him he could not be both lawyer and clerk at the ſame time; but he has promiſed to promote him the firſt vacancy that happens. We will be obliged to go to Hamilton at May; remember me kindly to all at home; give my love to Miſs Munro; write me ſoon; and believe me ever yours, &c.

(Signed) MARGARET.

A Did you open your laſt letter after it was ſealed? for when it came to me, I juſt touched it and it opened. I hope you put it into the poſt-office yourſelf. Tam deſires his beſt love to you.

22. LETTER, Miſs ANNE ERSKINE to Miſs WOODS. Dated 28th.
B November 1810; with Stirling Poſt mark thereon.

Dear Madam,

It was not till yeſterday that I received your letter of the 23d,
C and I loſe not a day to aſſure you, that I feel very ſincerely for the very diſtreſſing ſituation to which you find yourſelf reduced, by the unfortunate neceſſity of ſo abruptly breaking up ſchool. The report (but without any particulars) of this very diſagreeable buſineſs reached us the day before Anne Hay wrote to you, and
D though I told her that it was much too delicate a ſubject for ſo young a perſon to enter upon, or to preſume to give an opinion: my permitting her to fulfil her promiſe of writing to you, was a ſufficient proof to her, that I could not allow myſelf to impute any farther degree of blame to you, than what (permit me to ſay, your beſt friends muſt regret,) your having entered into ſo very ſerious a
E concern with a perſon of whoſe character and diſpoſitions you had not a more thorough knowledge than (to your misfortune) has proved to be the caſe. As I truſt, however, this is all you have to reproach yourſelf with, and that it has been Miſs P's unfound-
F ed jealouſy, and violence of temper, which has forced you to this open rupture, I moſt earneſtly hope, it will not affect materially your future proſpects in life, but that you will be able to form ſome plan for yourſelf, that will be crowned with more ſucceſs than this has been. I ſhall ever be happy to give my teſtimony to the great juſtice you did my nicce, when you were ſo ſituated
G as to be able to devote your whole time and attention to her; and cannot help regretting, that a perſon who appeared to me ſo eminently qualified, for the education and improvement of youth, ſhould be forced to relinquiſh a plan which for ſome time promiſed ſo fair.

H We have not yet learned any diſtinct account of the particular circumſtances which have cauſed the unfortunate rupture, but I mean to apply for it to my friend Mrs David Erſkine, who, I know from the firſt, took a very warm intereſt in your ſucceſs, and from her I likewiſe hope to hear that a conſcious rectitude ſupports you
I under this ſevere trial, without giving too much way to what it is impoſſible not keenly to feel.

If it is inconvenient for you to keep the books you mention, till A
our return to Edinburgh, they may be ſent to the care of Miſs Erſkine of Marr, 12. York Place. I diſcovered no miſtake in the account you gave me in, and the balance was ſuch a mere trifle, that I did not mean it ſhould be returned; but as it is uſual to acknowledge having received any packet containing money, I was appre- B
henſive it might not have reached you.

My young people feel a very deep intereſt in all which concerns you, and join with me in a very ſincere ſympathy for your preſent diſtreſs, and an anxious wiſh that you may be ſpeedily relieved from it. They deſire their beſt compliments to you and Mrs Woods, C
in which I beg to join; and remain, &c.

(Signed) ANNE ERSKINE.

23. CARD, Biſhop SANDFORD to Miſs WOODS. Dated Melville D
Street, Thurſday, April 5.

Biſhop Sandford preſents his beſt compliments to Miſs Woods. The young perſons of his congregation who are to be confirmed, will be requeſted next Sunday to attend the Biſhop at his own F.
houſe, on ſome day during the courſe of next week. As the Biſhop wiſhes to ſettle for that purpoſe a day and hour which may ſuit the young perſons in Miſs Woods' family, who are to be confirmed, he requeſts Miſs Woods to let him know what time will be moſt agreeable to her, as encroaching leaſt upon the regularity of her ar- F
rangements with her pupils. If Miſs Woods could favour the Biſhop with her preſence, together with her young friends, he would be much gratified.

Biſhop Sandford cannot omit this opportunity of requeſting Miſs Woods and Miſs Pirie to accept his beſt thanks, for the attention G
they have the goodneſs to pay to his daughter's improvement. Of this improvement the Biſhop and Mrs Sandford are daily more ſenſible; and their daughter ſpeaks of her kind friends in terms of reſpect and gratitude, which, to the great ſatisfaction of her parents, ſhew her to be 'a good ſcholar' in the beſt ſenſe of the H
term.

24. LETTER, Mrs SANDFORD to Miſs WOODS, without a date.

My dear Miſs Woods, I

The kind intereſt you take in our dear child, induces me to ſend you the incloſed, although I am ſure you will ſympathize with us in

A in the tidings they bring. Much as I am grieved, the piety that dictates them, conſoles my heart, and it is but juſtice to you and Miſs Pirie, to ſhow you that your labours have not been in vain. Ever believe me your truly obliged and ſincere friend, &c.

B

C WRITINGS produced by the WITNESSES for the PURSUERS.

1. LETTER, Miſs PIRIE to Mrs HAMILTON, George Street. Dated
D Drumſheugh, 5th November 1810, produced by Mrs HAMILTON on her Examination.

My deareſt Madam,

E I can now inform you that there is a proſpect of aſſerting my rights as a partner, and alſo of Mrs Woods' departure. When informed of my determination to oppoſe every thing that had any tendency to eſtabliſh *her* as head of this concern, and miſtreſs of the houſe, ſhe propoſed to retire with the third of our profits.

F Theſe terms were offered through the medium of Mr Reid, an Engliſh clergyman, who, though her friend, highly and ſeriouſly diſapproves of her attempts to deprive me of reſpectability, by repreſenting me as *her* governeſs, or a perſon that held a ſubordinate employment under her. That point is ſettled, but I fear it has
G been obtained at the expence of my future repoſe.

In the courſe of this buſineſs, circumſtances have ariſen to ſhake my faith in my friend's affections for *me*. I always loved *her* as my own ſoul; and would willingly have laid down my exiſtence to increaſe her comforts, till my confidence in her ſincerity was
H ſo cruelly ſhaken.

When I give way to doubts, I feel miſerable beyond deſcription; and circumſtances are daily occurring to prove, that ſhe would ſacrifice me to her aunt's pride and comfort. Dear Madam, how ſhould I act? I can *never* conquer my affection, ſhould ſhe even
I declare herſelf my enemy. I have loved her for eight years with ſincere and ardent affection, and have accuſtomed my mind to contemplate

template her as the model of every virtue. And if I cannot regard her as ſuperior to every thing that is unworthy of a great and exalted mind, I feel miſery muſt be my portion in this life. You muſt aid me with your advice, as you can enter into my feelings, and, perhaps, adminiſter an opiate that can aſſuage the heart-rending ſorrow I frequently experience. Pardon this incoherent production. Permit me to ſee you when convenient. And believe me your ever grateful, &c. A B

(Signed) JANE PIRIE.

2. ACCOUNT-BOOK produced by Mrs WOODS on her Examination, with the following Certificate annexed to it: C

Drumsheugh, December 26. 1809.

Whereas by ſome miſtake moſt of the accounts ſpecified in the five preceding pages, are ſtated and diſcharged in my name, I hereby declare, that I paid no part of the furniſhings in the preceding accounts; that the ſame were paid equally by Miſs Woods and Miſs Pirie. And I further declare, that I have no title whatever to the ſaid furniſhings. D F

(Signed) ANN WOODS.

WRITINGS produced in the courſe of the DEFENDER's Proof.

CARD Mr BALFOUR to Mr MUNRO.

Mr Balfour has uſed the freedom to call upon Mr Munro to requeſt of him to procure from his daughter Miſs Janet Munro, the book in which the leſſons, called the Diſgrace Leſſons at Drumſheugh School, were marked for her to learn, if it be in exiſtence, that it may be lodged in the proceſs with Lady Cumming Gordon. Mr B. reſorts to this method of procuring the book by advice of counſel, out of delicacy to Mr Munro's daughter, who would otherwiſe have to undergo another examination on the ſubject, which, it is conceived, would be extremely diſagreeable to her F G

A her. If Mr Munro can get the book this forenoon, he may ſend it to the Lord Juſtice-Clerk's chambers; or if he cannot get it ſo ſoon, he may then ſend it to Mr Balfour's houſe in the afternoon; and in either caſe, it may be accompanied with a note, ſaying, ' That it is the book in which the leſſons, termed the Diſgrace or
B ' Puniſhment Leſſons at Drumſheugh School, were marked for his ' daughter to learn.'

' 7. *Albany Street, Friday, March* 29.'

LETTER, Miſs STIRLING to Miſs CUMMING. Dated Kippenroſs,
C 22d January 1811.

My dear Miſs Cumming,

My mother received Lady Cumming's letter this morning. I do not think that my teſtimony can be of the leaſt conſequence, as I
D myſelf never witneſſed any thing improper in the behaviour of the Miſſes Woods and Pirie. All that I know of the affair, you, Miſs Munro, and Charlotte the maid, told me; and I ſaid that I could not underſtand what it was that they did, nor do I at this moment, and you ſaid that you could not tell me; but that when
E your grandmamma came home, you would tell her. The maid, you may recollect, told us, that ſhe had caught them one morning in bed together in the dreſſing-room, and that Miſs Pirie jumped out of bed with her face as red as ſcarlet: ſhe alſo ſaid, that they might as well take a man at once. I was one night awakened by
F a violent knocking. I afterwards aſked Miſs Woods what it was: ſhe ſaid that ſhe had locked the door, and that Miſs Pire wanted to get into the room. You know what Miſs Munro ſaid, as you were preſent at the time, and I dare ſay you will remember that ſhe told us that ſhe was diſturbed in the night, and that both Miſs
G Woods and Miſs Pirie were in the bed with her. As for what I ſaid to Miſs Macdowall, I merely told her that what I had been told of their behaviour was extremely indecent.

I am ſorry our correſpondence ſhould have begun on this diſ-
H agreeable ſubject, which I regret we ever heard of. And I remain yours ſincerely,

(Signed) E. C. STIRLING.

LETTER, Lady CUMMING GORDON to Mrs STIRLING. Charlotte Square, January 20. 1811; with Poſt mark effaced.

My dear Madam,

I Seeing that the requeſt I am about to make you is now become neceſſary, I am inclined to make it a perſonal one, from the feel-

ing

ing that it muſt be leſs diſagreeable to you than any communica- A
tion with my agent or counſel. You cannot be ignorant of the
very wretched affair in which I am at preſent involved, from ha-
ving acted, as I feel that you or any Chriſtian mother muſt have
acted, in the ſame ſituation; that is, from having been the means
of removing the children of other mothers from a ſituation which B
I ſhould have looked on it as ruin to my own to have remained
in. Had the communication which your daughter made to Miſs
Macdowall, only preceded what my poor girl made to me, you might
have been called upon to act the part I did: but, as it is, I hope
that you will feel it as a common cauſe. Theſe women are now C
ſuing me for damages, with a view to clear their characters,
and enable them to ſet up ſchool again. They have many
friends, and the ſtory is ſo horrible, that although my grand-
daughter and Miſs Munro are perfectly clear, and many corrobo-
rating proofs beſides, yet my counſel have thought it neceſſary to D
make an application to you, for a clear written ſtatement of what
your daughter knows, either from her own obſervation, or from
what ſhe has heard the maid ſay. I truſt that no over ſcrupulous
delicacy will prevent you doing what I hope you will feel to be
juſtice to me. It is already known, that Miſs Stirling has corro- E
borated the other girls' teſtimony, and ſhould we fail in eſtabliſh-
ing a complete proof, it lands all who are concerned in the charge,
of being the inventors of this moſt horrible ſtory. If there is a
proof led, it will be conducted in a private room, and every thing
will be done to avoid any thing further than a written ſtatement F
being required from you. I underſtand, that one of their ſtrongeſt
pleas for damage from me, is a letter which they ſay they receiv-
ed from you, ſtating the information you had got through me.—
I truſt that you will forgive all this from one who is a perſonal
ſtranger; and that, as I ſaid before, you will look on this buſineſs G
as a common cauſe, in which, God knows, I have had the worſt
ſhare. Mr Forbes has aſſured me, that I may truſt to your doing
every thing that is right.—Again let me beg your forgiveneſs for
the trouble I have given you, and I remain

Dear Madam, with eſteem, H
Your obedient humble ſervant,
(Signed) HELEN CUMMING GORDON.

Have the goodneſs to incloſe the ſtatement to me, Lady Cum-
ming Gordon, Charlotte Square, Edinburgh. I

LETTER

LETTER, Mrs STIRLING to Lady CUMMING GORDON. Dated Kippenroſs, January 22. 1811.

Dear Madam,

A I received your letter of the 20th this morning, which diſtreſſes me extremely, as I hoped all your anxiety on the ſubject of the Miſſes Woods and Pirie was at an end. The part you have taken in this very diſagreeable buſineſs, I am convinced proceeded from the very beſt motive, and I truſt you ſhall not loſe your reward, B however it may terminate. Moſt willingly would I give you every ſupport in my power, but am quite at a loſs how to make out any clear ſtatement from my daughter. When ſhe came home, I deſired her never to mention the ſubject, and to diſcharge it from her mind. She never witneſſed any thing improper in the C behaviour of the Miſſes W. and P.: Therefore any thing ſhe could ſay, would be of no more avail than any hearſay evidence. That being the caſe, I cannot ſuppoſe any one ſo cruel as to call upon her when ſhe can be of no uſe. With deep regret, I have now given her your letter, which ſhe propoſed anſwering in D one to Miſs Cumming, which is incloſed, open, for your inſpection. Pleaſe return it if uſeleſs, or when this unfortunate affair is ſettled. I alſo ſend a copy of my letter to Miſs Woods, upon receiving the friendly information through Mrs Forbes, for which I was much obliged.

E I enter deeply into your feelings, and remain, Dear Madam, with good wiſhes, your obedient humble ſervant,

(Signed) MARY STIRLING.

Sent, January 23d,—Lady Cumming Gordon, Charlotte Square, F Edinburgh.

CARD from Mrs FORBES to Mrs DUNDAS.

G Mrs Forbes preſents beſt compliments to Mrs Dundas. From Mr Forbes's friendſhip and intimacy with the Kippenroſs family, Mrs Forbes thinks it her duty to inform Mrs Dundas, that Lady Cumming has this day taken the Miſs Dunbars and Miſs Jane Cumming from Miſs Woods and Pirie's boarding-ſchool, and if Mrs Dundas will H ſend for Miſs Stirling, ſhe will ſoon be able to ſatisfy Mrs Dundas of the impropriety of her again returning to their ſchool.

41. *Princes Street, Wednesday.*

At Edinburgh, March 14. 1811.

In the Cauſe, PIRIE and WOODS *v.* Lady CUMMING GORDON.

Preſent; The Right Honourable Lord JUSTICE-CLERK, Lords MEADOWBANK, ROBERTSON, NEWTON and BOYLE, the Clerk to the Proceſs, and the Counſel and Agents for the Parties.

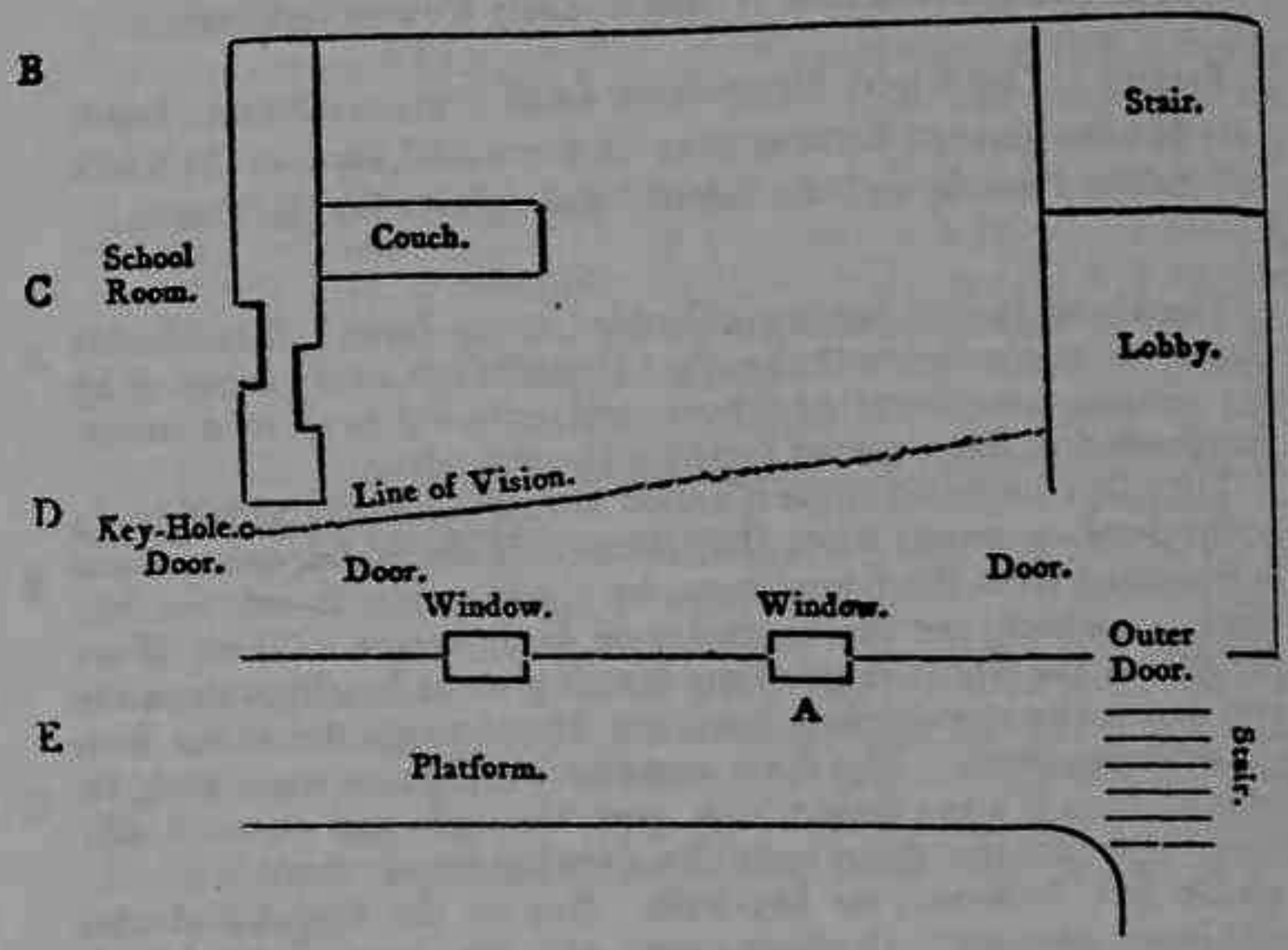
The above Judges having aſſembled at the Lord Juſtice-Clerk's Chambers, proceeded to the houſe at Drumſheugh, lately occupied by the purſuers as a boarding-ſchool, and referred to in the condeſcendence and ſtatement of facts for the defender. A

They firſt inſpected what is called and admitted on both ſides to be the drawing-room; when they found that the ſaid drawing-room is ſeparated from the ſchool-room by a mid gable about two feet thick, in which are the chimnies of both rooms. There is an entry from the ſchool-room to the drawing-room, in which there are two doors, the one opening into the ſchool-room, the other into the drawing-room. The door next the ſchool-room has a lock, in which there is a key-hole which goes through and through the door. But on the door next the drawing-room, there is a lock, which has, however, no key-hole. But on the ſuppoſition that this inner door were ſtanding open, and the door of the ſchool-room ſhut, a perſon looking through the key-hole can ſee into the drawing-room, but, owing to the thickneſs of the wall, can ſee nothing laterally, but only ſtraight forwards to the oppoſite door. B C D

On the other ſide of the drawing-room, directly oppoſite to the entry from the ſchool-room, there is another entry to the drawing-room, from the paſſage or lobby, to which there is a door, having an old-faſhioned braſs lock, with a key-hole only on one ſide; ſo that no perſon can ſee into the room through it. They did not perceive any other holes or chinks in the door, through which a perſon could peep. They alſo ſaw the couch ſtanding againſt the wall, next the ſchool-room, and, by the marks, it had viſibly rubbed againſt paint, plainly not recently done, they were ſatisfied, that the couch had uſually ſtood in this place. E F

A The room ſeemed to be nearly ſquare, and the annexed ſketch, No. 1. gives an idea of it.

No. 1.



F They found, that a perſon ſtanding on the platform, or on the outer ſtair, can ſee into the drawing-room by the window A; and, if the light be favourable, they think a perſon ſo placed can ſee as far as the couch.

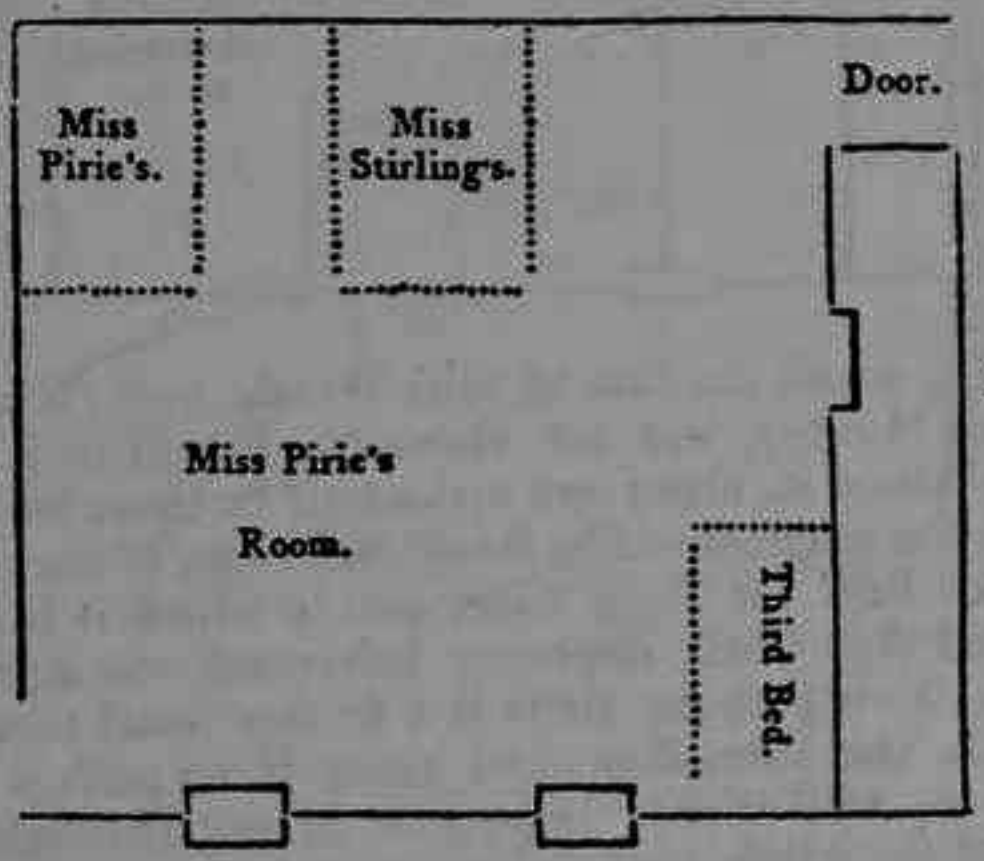
The houſe appears to have been originally two houſes, with two G outer-doors, two lobbies, and two ſtaircaſes, and there is no paſſage connecting the rooms in the two houſes. To go from the ſchool-room to the drawing-room, or *vice verſa*, a perſon muſt either go through the double door at once, or round by the lobby, down ſtairs, and through the lower part of the houſe up to the lobby of H the other houſe.

The ſame obſervation applies to the bed-rooms above ſtairs. To go from the bed-rooms in the one houſe to thoſe in the other, a perſon muſt either paſs through ſome of the other bed-rooms, or go down ſtairs, and through the ſchool-room and drawing-room. They further

further examined the bed-rooms, and ſituation of the beds. In A
Miſs Pirie's room, her bed, in which ſhe ſlept with Miſs Cumming, ſtands with its ſide to the wall; and along ſide of it, ſtands the bed in which Miſs Stirling ſlept. This laſt bed is on caſtors, and appears, by the marks on the floor, to have been often moved, probably for making it. From the poſition of thoſe marks, B
Miſs Stirling's bed appears to have ſtood at a diſtance from Miſs Pirie's, varying from eighteen inches to two feet and a half, according as the maids replaced it, after making it.

There is alſo another bed in this room, ſtanding at ſome little diſtance, partly acroſs the foot of Miſs Stirling's bed, thus: C

SKETCH, No. II.



D

E

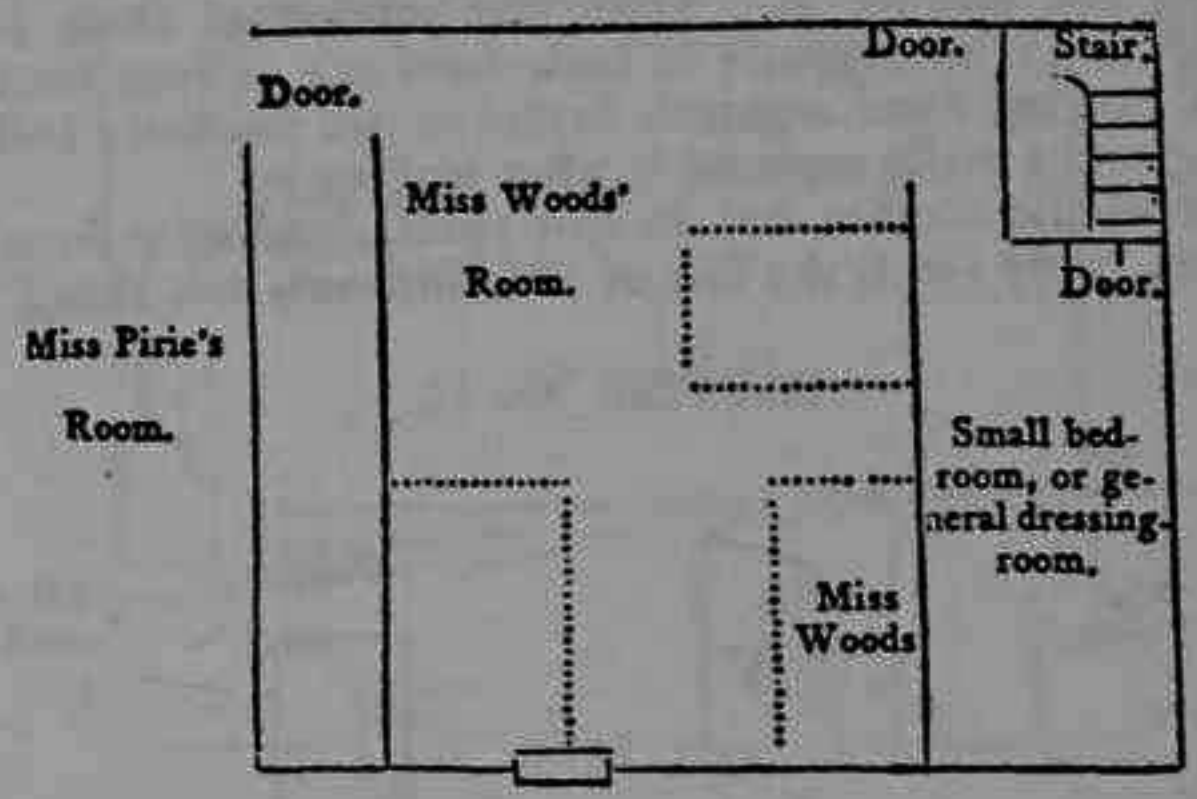
F

G

In

A In Miſs Woods' room there are alſo three beds, which are placed thus:

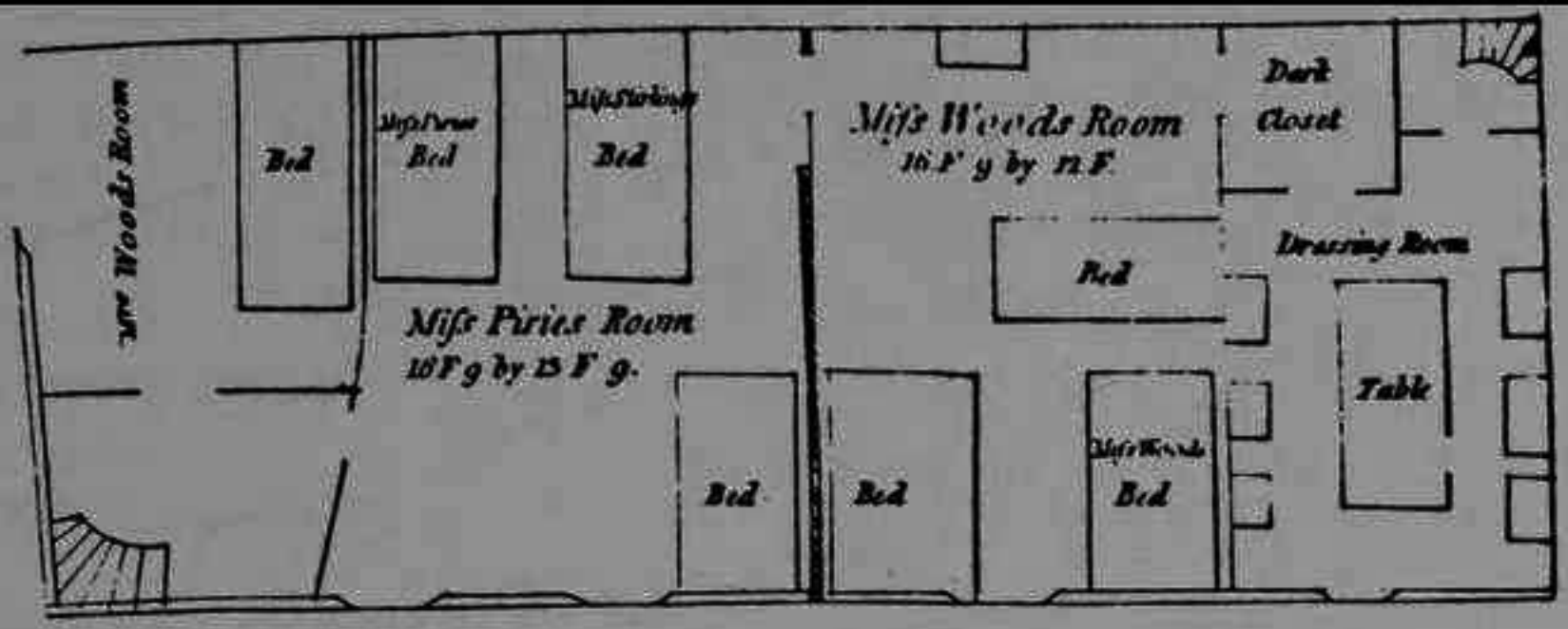
SKETCH, No. III.



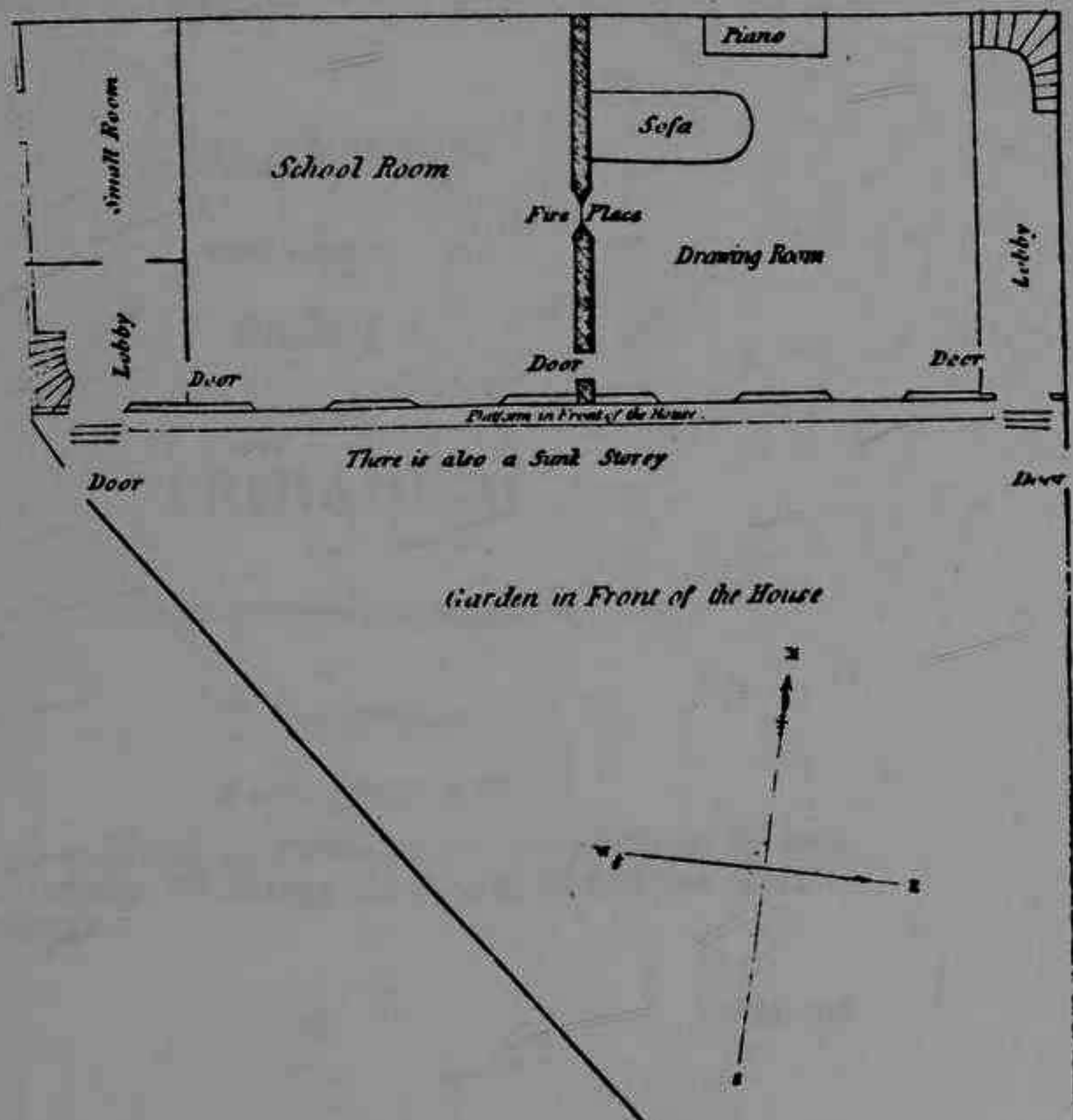
E The bed ſtanding acroſs the foot of Miſs Woods' bed, (in which ſhe ſlept with Miſs Munro), was not above one foot from it; the other bed. along-ſide of it, about two and a half or three feet, and it projected upon the window. The ſmall bed-room is the one in which Miſs Woods ſlept for ſome time, and in which it is ſtated F that Charlotte had ſeen their improper behaviour one morning. Adjoining to Miſs Pirie's room, there is a ſimilar ſmall room, in which Mrs Woods, the aunt, ſlept, and there is no paſſage from that ſmall room to Miſs Woods' bed-room, except through Miſs Pirie's room, without going down ſtairs, through the ſchool-room G and drawing-room and lobby, and up the other ſtair.

With all which aviſandum is made to the Court, and the term circumduced *binc inde*.

ALLAN MACONOCHIE.



Drawing Room Floor.



SECOND DIVISION.

Lord Meadowbank.

JUNE 24. 1811.

In CAUSA,
MISSES WOODS & PIRIE,
AGAINST
LADY CUMMING GORDON.

Mackenzie & Innes, W.S. Agents for Def^{r}.
Ja^{s}. Balfour, W.S. Agent for Purs^{r}.

Mr MACKENZIE, Clerk.

AUTHORITIES

WITH REGARD TO THE

PRACTICE

OF

TRIBADISM.

I.—DIVINES.

PAUL, *Romans* i. 26.

FOR this cauſe God gave them up unto vile affections: for even their women did change the natural uſe into that which is againſt nature.

1. Hugonis Grotii Annotationes.

Αἵ τε γὰρ θήλειαι αὐτῶν μετήλλαξαν τὴν φυσικὴν χρῆσιν εἰς τὴν παρὰ φύσιν.] Incipit a fœminis quas maxime pudor decet, etiam circa naturales voluptates. Μετήλλαξαν cum particula εἰς, eodem ſenſu quo id verbum ſequente ἐν bis habemus, quia Hebræi ב ponunt, quod et per εἰς et per ἐν vertitur. Tangit illarum ulcus quas *tribadas* vocant Phædrus et Martialis; *fictrices*, Tertullianus; quarum fuit, ingenio et poeſi nobiliſſima Sappho, quæ apud Ovidium ſic loquitur:

Lesbides infamam quæ me ſecistis amatæ.

Recte infamem, ob πάθος ἀτιμίας. Seneca, Epiſt. 95. de ſui ſeculi fœminis: *Libidine vero ne maribus quidem cedunt, pati natæ. Dii illas deæque male perdant: adeo perversum commentæ genus impudicitiæ.* Clem. Alexandrinus: καὶ γυναῖκες ἀνδρίζονται παρὰ φύσιν. Voci μετάλλαξαν quæ hic uſurpatur affinis eſt, et paris ſignificatus ἐναλλάσσειν· unde ἐναλλαγμένους dixit Aquila, Oſeæ iv. 14., pathicos, qui non minus quam iſtæ fœminæ ſexus officia commutabant, et de quibus jam agit Paulus.

2. Mathew Poole.

The ſame interpretation, and almoſt in the ſame words, is given as the received interpretation in 'Synopſis Criticorum aliorumque 'Scripturæ interpretum, curâ Mathæi Poli,' vol. v. Comment. in Epiſt. ad Romanos.

3. Macknight.

Dr Macknight gives this commentary of the ſame verſe, and ſubjoins the following note:

'For even the women changed the natural uſe of their bodies, into that which is contrary to nature, burning with luſt towards one another.'

Note.—For even their females changed the natural use.—The women of Leſbos are ſaid, by ancient authors, to have been, many of them, guilty of this vice. They were called Tribades. Martial inſcribes the 90th Epigram of his firſt book to a woman of that character, named *Bassa.* See alſo Levit. xviii. 23.—*Macknight on the Epistles*, vol. i. p. 158.

II.—LAW

II.—LAW WRITERS.

Lord Royston, in his Notes on Sir George Mackenzie's Criminal Law, on the Chapter of Sodomy and Beſtiality, thus writes:

Voet, tit. d. Adult. n. 24. touches very lightly this dirty ſubject: All he ſays is, De nefanda virorum cum viris, fœminarum cum fœminis, hominum cum brutis, commixtione, aliaque ſimili contra naturam luxuriantium, fœditate, Vid. Farin. 9. 148.; Jul. Clar. § Sodomia; Gregorius Tholoſanus, Syntagm.; Jur. Civ. lib. 36. cap. 10. et 14.; Menochius Arbitrar. Jud. lib. ii. caſu 286; Damhoudras, Pract. Crimin. cap. 96.; Ant. Mathæus, De Crimin. lib. 48. tit. 3. cap. 6. num. 8. et ſeq.; Carpzonius, Pract. Crimin. quæſt. 76.; Brower, De Jure Connub. lib. ii. cap. 4. num. 19.; Grœnewegen, ad § 4. Inſt. de Publ. Judic. num. 12. 13.; Leeuwen. Cens. For. part. 1. lib. 5. cap. 28. num. 8. et ſeq.; Parens, p. m. Paulus Voet, ad § 4. Inſt. de Publ. Judic. num. 9, 10, 11, et Vulg. DD. ad l. 31. C. h. t. et ad d. § 4. Inſt. de Publ. Judic.

The Spaniſh writers, both Lawyers and Divines, ſtate many caſes of thoſe execrable crimes of ſodomy and beſtiality, not fit to be named by Chriſtians, and I hope ſhall never be known amongſt us. But in caſe ſuch queſtions ſhould come before a criminal Judge, as they deſerve condign puniſhment, it is fit he ſhould not be ignorant of the opinions of lawyers, and the practice of other nations in puniſhing them.

Gomez, Comment. ad Ll. Taur. leg. 80. ſtates a great many caſes, and treats them with great learning, and cites authorities both from laws and DD. The chief queſtions are,

Si vir habeat acceſſum ad uxorem contra naturam, qualiter puniatur.—N. 32.

Si fœmina cum alia fœmina agat contra naturam.—N. 33.

In both theſe queſtions, he mentions many different ways in which theſe abominations are committed, which muſt needs offend chaſte ears; but as he ſays, "Pudet loqui in tam nefanda crimine et turpi materia, ſed ut loquitur D. Chryſoſt. in Epiſt. Paul. ad Corinth. non dedignantur prædicatores in hoc deteſtabili crimine verba proferre pro utilitate populi; ita ego (Gomez) nolo dedignari de eo loqui pro bono publico et inſtructione judicum et pœna malorum, et terrore et exemplo bonorum.

Theſe

5. Sanchez.

Imo idem dicendum eſt de ſodomia inter duas fœminas commiſſa, quam eſſe veram ſodomiam teſtatur D. Th. 2. 2. qu. 154. et puniri pœna ordinaria, quando inſtrumento aliquo medio, ligneo aut ferreo, aut ex quacunque alia materia confecto, committitur: docet Ant. Gom. l. 7. Taur. l. 34. Atqui ita eam eſſe ſufficientem divortii cauſam aſſerunt Monal. et Io. de Frib. n. 3. *alligati;* quod tunc verum eſſe credo, quando medio aliquo inſtrumento vel abſque illo, ſemen immitteretur in vas naturale aut præpoſterum fœminæ: Quod fieri poſſe affert ex Avicenna Ant. Go. ibid. Tunc enim caro fœminæ patientis in carnem agentis dividitur, ac ſi ſodomiticam copulam habitam a maſculo patereture. Secus tamen eſſet ubi ſemen aut non expelleretur, aut extra vas decideret; quia tunc ceſſat carnis diviſio, ut etiam dicimus nu. 13. de ſodomia a viro exercita.—*Lib.* 10. *Diſp.* 4.

6. Paponius.

Duæ mulieres invicem laſcivientes, abſque maſculo, morte punendæ ſunt; idque delicti genus damnatus, et contra naturam fœdiſſimus coitus eſt; l. *fœd.* juxta unam lectionem Accurſii, Cynus hanc interpretationem tenet, et ait adeo abominandas ac fœdas reperire mulieres quæ calore cupidinis illicitæ alias mulieres ſectentur, eque ac maſculus fœminam inſectari ſolet. Hujus criminis accuſatæ fuerint Franciſca Eſtaſia et Catherina Maneſia. Adverſus eas teſtes producebantur; verum quia valide recuſati fuerant, ſuper ipſorum depoſitione ad mortem condemnari non poterant. Propter gravitatem vero delicti, ipſorum depoſitiones indiciorum inſtar fuerunt acceptæ, prædictæque fœminæ condemnatæ ut quæſtioni ſubjicerentur a Seneſchallo Landenſi, et arreſto poſtea relaxatæ.

Hoc arreſtum deſumptum eſt e Boerio, ut et præcedens. Fœminæ hæ appellantur *Tribades*, et inordinem earum collocata eſt Sappho cum Baſſa; de quibus loquitur Martialis; lib. i. 91. *Quod tam, tam manibus junctam te Baſſa vocabat.* Et *Philenis* ipſarum troadum, tribes *Philen.* Tertullianus eas vocat *fricatrices*, in libro ſuo ſcholaſtico de Pallio.

Corpus Juris Francici, lib. 22. 77.

7. Dam-

7. Damhouderius.

Affine crimen ſodomiæ committunt maſtupratores, *tribades*, et ſimiles; grave et deteſtandum iſtos admittere crimen, et relegationis aliave pœna illud coercere patet ex *D. Carp.* P. C. c. 95.

8. Brunemannus.

Maſtupratores. *tribades* et ſimiles, quomodo puniendi, vide *Struv.* *l.* th. 43.

Ad Cod. ix. 10. 31.

9. Boerius.

Sed quid de duabus mulieribus actum venereum facientibus et ſe corrumpentibus? Et iſtam quæſtionem vidi in curiam venire. Et videtur quod non ſint puniendæ, ut patet ex Juven. ii. Satyr. loquendo in perſonam mulierum:

" Tænia non lambit Cluniam, nec Flora Catullam."

In contrarium, quod pœna ultimi ſupplicii puniri debeant.— *Leg. Fœdiss. C. de Adult.*

Dec. 316.

10. Valentinus.

Ne mulieribus a Ironte introductionis in *Novellas Med. Leg.* injuriam intuliſſe videor; non poſſum non hic caſum inauditum, et prorſus abominandum referre, quo fœmina ſexum virilem diu mentita, tandem, in tractu Halberſtadienſi aliam ſibi conjugio maritori, et, horrendum dictu, copula ſacerdotali jungi curavit; cui ut ſe virum præſtabat, membrum virile artificiale quod noſtrates *rexatzem (einen Voetzper)* appellare ſolent, femoribus et inguini alligando, et cum amaſia ſuo conſuescendo, muliebria hujus tantopere exercuit, ut tandem miſerrime violata, nefandum faciunt conſanguineis ſuis primum, et abhinc Magiſtratui publico detegere neceſſum habuerit. Formato illi proceſſu reaque convicta et confeſſa, de pœna illi infligenda quærebatur. Quæ cum nullibi ſit expreſſa, Magnus quidem Academiæ Giſſenæ Jctus et Anteceſſor conſultus fuit qui D. requirentem ad integram facultatem juridicam remiſit, cui acta nondum communicata ſunt.

Introd. ad auth. Med. Leg.

11. Matthæus.

Sequitur Venus monſtroſa, de qua ne pudicas aures offendam, pauciſſimis agere conſtitui. Monſtroſa Venus eſt, quæcunque vel virum vel fœminam mentitur. Cujus rei ſunt pædicones, pathici, tribades, maſtupratores, fellatores, irrumatores, et qui nefandam libidinem cum brutis exercent; *De Crim.* p. 419.

12. Carpzovius.

Secundo—ſi mulier abutatur venere, cum muliere libidinem ſuam exerceat; *l. ffœdiss. Prac. Nov. Pars. H. Quæst.* lxxvi.

REFERENCES.

Julius Clarus, L. v. n. 29.
Conradus. Tit. de Sodomia, n. 4.
Petrus Caballus, Reſolutiones, 19. n. 14.
Cynus. in l. Fœdiss.
Aretinus de Maleficiis, &c. Cap. xi. 'Che hai adulterato la 'mia donna,' n. 51.
Simon Van Lewen, Cenſura Forenſis, L. v. c. 28.
Petrus Gregorius, L. 36. Syntaq. c. 14. n. 2.
Didacius in Epit. de Spon. in 2da parte, c. 7. § 5.

III. MISCELLANEOUS AUTHORS.

Plato, as quoted by Struvius.

Intelligendum eſt eam eſſe naturalem voluptatem, cum fœmina maſculo copulatur ad generationem; cum vero maſculi cum maſculis copulantur, aut cum fœminis fœminæ, illam eſſe præter naturam, et ſummum audaciſſimumque facinus, voluptatis fœda intemperie turpiſſimum. *De leg. lib.* 1.

Avicenna.

Mulieres enim tum plurimum tardantur in emittendo ſperma et remanent non complentes deſiderium ſuum, quare non fit generatio. Et iterum ipſe remanent tum deſiderium ſuum; quare ille

qui

qui ex ipſis non cuſtodiuntur mittunt in illa diſpoſitione ſuper ſeipſas quam inveniunt, et propter hanc cauſam redeunt ad fricationem, ut perveniat in eo quod eſt inter eas complementum voluntatis.—*Fen.* xx. *tertii c.* 38.

Gloss upon the above Paſſage.

Secundo dicit, quod in iſto caſu mulier remanet, ſuum concupiſcens adimplere deſiderium, et, niſi tunc cuſtodiatur, mittit ſtatim aliquem ſupra ſe, juvenem vel juvenculam cum qua ſe confricat, donec complementum ſuæ libidinis adepta fuerit, vel aliis modis ſeipſam corrumpit, quos tacere magis quam exprimere fas eſt.

MARTIAL.

Quod nunquam maribus junctam te Baſſa videbam,
  Quodque tibi mœchum fabula nulla dabat;
Omne ſed officium circa te ſemper obibat
  Turba tui ſexus, non adeunte viro;
Eſſe videbaris, fateor, Lucretia nobis:
  At tu (proh facinus!) Baſſa fututor eras.
Inter ſe geminos audes committere cunnos,
  Mentiturque virum prodigiosa Venus.
Commenta eſt dignum Thebano ænigmate monſtrum.
  Hic, ubi vir non eſt, ut ſit adulterium.

Lib. I. Epig. 91.

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JUVENAL, Sat. VI.
OVID. Epiſt. Sappho ad Phaon.
MARTIAL, paſſim.
PHÆDRUS, IV. 14. 1.
AUSONIUS, Cupid. Crucif.

Spence's LUCIAN.

A DIALOGUE between CLEONARIUM and LEÆNA.

Cleonarium. Strange rumours run of thee, Lcæna; how Megilla that rich Lady of Leſbos, careſſes thee as a man would do; How 's't for God's ſake? But tell me, is't true?

Tull. Agedum, Dea mea, tibi ego vir fui, mea ſponſa, mea conjux.

Oct. O utinam mihi vir eſſes! quam amantem haberes uxorem, quam amatum haberem virum! Enimvero, etiam tu hortum meum imbre peroluiſti, que me ſentio perfuſam. Quam ignominiam depluiſti in me, *Tullia!*

Tull. Nempe perfeci opus. et venereum virus ex cæca navis meæ ſentina projecit in cymbam virgineam tuam, amor cæco impetu. An in imis præcordiis major umquam permovit ſenſus tuos voluptas?

Oct. Nullam fere, ita me Venus amet, ex ea re quam feciſti, animadverti me percepiſſe voluptatem. Commotior paululum fui, cum te commotiſſimam ſenſi, et ex ardore tuo ſcintillæ aliquot in eam partem, quam obruebas tuis crebris ſubſultibus, inciderunt. Sed de incendio potius monuerunt, quam incenderunt. Verum, dic mihi, *Tullia*, ille etiam morbus tuus aliarum fœminarum mentem invadit, ut puellas ament et petant?

Tull. Amant et petunt, niſi quæ ſunt ſtolidæ et ſaxeæ: nam quid gratius puella nitida et polita, ut tu nitida et polita es. Sic Iphim nondum puerum Ianthe urebat.

. . . . . .

Oct. Etenim virgo non es, quæ virum experta es: plena tibi liberum eſt voluptate potiri. Qui fieri poteſt ut me ames? ut ea via Venerem quæras, qua Venus aberrat ſemper a Venere.

Tull. Primum, *Pomponium* meo (nihil enim ex rebus meis volo te lateat) cum familiariores altera alteri a crepundiis eſſemus, ante hos annos ſic cœpit mecum colluctari ingenioſa, ſed procax; libidinoſa, ut nulla magis, ſed casta, ut etiam nulla magis. Abhorrebat a principio ab ea re animus meus: paulatim aſſuevi huic, ut loquebar, moleſtiæ: et exemplo præibat *Pomponia*, uſuram corporis ſui non modo accommodans petulantiæ meæ; ſed et ipſa jubens, dulciſſima mihi pellex, et ſibi lena. Demum factum eſt longo hujus voluptatis uſu, ut ab ea me vix queam abſtinere. Sed ubi fulgetris tuis innumeris cor meum perculiſti, *Octavia* mea, amore tuo ita exarſi, ita exardeo, ut omnia, imo, *Calliam* meum, præ te habeam deſpectui; et in amplexibus tuis mihi credam reposita voluptatem omnem. Noli præterea me putare proterriorem. Nam hic mos ubique fere terrarum inolevit. Italiæ, Hiſpaniæ, Galliæ fœminæ invicem amant, altera in alterem ruant prurientes. Leſbiis præſertim olim id ſceleris familiare, quod Sapphus nomen commendavit, atque adeo nobilitavit. Illius lumbos Andromeda, Athis, Anactorie, Mnais et Girino amaſiæ, quam

iæpe fatigarunt ! Ejus generis Heroidas Græci tribadas vocant ; Latini fricatrices et ſubagitatrices. Philænis vero, quod huic voluptati indulgeret perditiſſime, inveniſſe credita eſt ; et uſu ſuo, quæ ſcilicet magni nominis erat, inauditæ ad ſuam ætatem voluptati uſum fœminis puellisque apud ſuos ſuaſiſſe. Tribadas dixerunt quod tererent ac tererentur ; fricatrices a corporum frictione, ſubagitatrices a motu concitatiori. Quid plura? *Octavia* mea, *agere et pati* mulieris eſt non infacetæ, ac cui cor ſalit ſub pectore.

Oct. Hercle, mira narras ; ſed jecunda æque ac ridicula. Tu igitur jam audies et tribax et fricatrix et ſubagitatrix : quam me vero dices ?

Tull. Cypridem meam mollem, mellitam, auream. Etenim nihil admovi quo fieres minus integra, quo perfringerem oſtiolum iſtud tuum, quo delibarem virginitatem iſtam tuam florentem.

BRANTOME, *Vie des Dames Galantes.*

Si feray-je encor cette queſtion, et puis p'us qui possible n' a point esté recherchée de tout le monde, ny possible songée, à sçavoir, si deux dames amoureuses l'une de l'autre, comme il s'est veu et se void souvent, couchées emsemble, et faisant ce qu'on dit, *Donna con Donna*, en imitant la docte Sappho Lesbienne, peuvent commettre adultere, et entre elles faire leurs marys cocus.

Certainement si l'on veut croire Martial en son premier livre des Epigrammes, epigr. cxix. elles commettent adultere, où il introduit et parle à une femme nommée Bassa Tribade, luy faisant fort la guerre de ce qu'on ne voyoit jamais entrer d'hommes chez elle, de sorte qu'on la tenoit pour une seconde Lucrece, mais elle vint à estre descouverte, en ce que l'on y voyoit aborder ordinairement force belles femmes et filles, et fut trouvé qu'elle mesme leur servoit et contrefaisoit d'homme et d'adultere, et se conjoignoit avec elles et use de ces mots : *geminos committere cunnos ;* et s'écriant, il dit et donne à songer et devincr cet enigme par ce vers Latin :

Hic ubi vir non est, ut sit adulterium.

Voilà un grand cas, dit-il, que là où il n'y a point d'homme, il y aye de l'adultere.

J'ay connu une courtisanne à Rome, vieille rusée, s'il en fut onques, qui s'appelloit Isabelle de Lune, Espagnolle, laquelle prit en telle amitié une jeune courtisanne qui s'appelloit la Pandore, l'une des belles pour lors de toute Rome, laquelle vint à estre mariée avec un sommelier de Monsieur le Cardinal d'Armagnac, sans pourtant se distraire de son premier mestier; mais cette Isabelle l'entretenoit, et couchoit ordinairement avec elle; comme desbordée et desordonnée en parole qu'elle estoit, je luy ay souvent ouy dire, qu'elle la rendoit plus putain, et lui faisoit faire des cornes à son mary plus que tous les ruffiens que jamais elle avoit eu.

Je ne sçay comme elle entendoit cela, si ce n'est qu'elle se fondast sur cette empigramme de Martial.

On dit que Sappho de Lesbos a esté une fort bonne maistresse en ce mestier, voire dit-on qu'elle l'a inventé, et que depuis les Dames Lesbiennes l'ont imitée en cela, et continué jusques aujourd'huy, ainsi que dit Lucian, que telles femmes sont les femmes de Lesbos, qui ne veulent pas souffrir les hommes, mais s'approchent des autres femmes, ainsi que les hommes mesmes; et telles femmes qui aiment cet exercise, ne veulent souffrir les hommes, mais s'adonnent à d'autres femmes, ainsi que les hommes mesmes: elles s'appellent Tribades, mot Grec, derivé, ainsi que j'ay appris des Grecs, de τριβειν, τριβω, qui est autant à dire, que *fruare*, freyer, ou friquer, ou s'entrefrotter; et Tribades se disent *fricatrices*, en François fruatries, ou qui font la friquarelle en mestier de *Donne con Donne*, comme l'on la trouve ainsi aujourd'huy.

Juvenal parle aussi de ces femmes, quand il dit, *frictum grissantis adorat*, parlant d'une pareille tribade, qui adoroit et aimoit la friquarelle d'une grissante.

Le bon compagnon Lucian en fait un chapitre, et dit, ainsi que les femmes viennent naturellement à conjoindre comme les hommes, conjoignants des instrument lascifs, obscurs et monstrueux; faits d'une forme sterile, et ce nom, qui rarement s'entend dire de ces fricarelles, vacque librement par tout; et qu'il faille que le sexe feminin soit Filenes, qui faisoit faction de certaines amours homasses; toutesfois il adjouste, qu'il est bien meilleur qu'une femme soit adonnée à une libidineuse affection de faire le masle, que n'est à l'homme de s'effeminer; tant il se monstre peu courageux et noble; la femme donc selon cela, qui contrefait aussi l'homme, peut avoir reputation d'estre plus valereuse et courageuse qu'une autre; ainsi que j'en ay connu aucunes tant pour leur corps que pour l'ame.

En un autre endroit Lucian introduit deux Dames, devisantes de cet amour, et une demande à l'autre, si une telle avoit esté amoreuse d'elle, et

si

si elle avoit couchée avec elle, et ce qu'elle luy avoit fait ? l'autre luy respondit librement, premierement elle me baisa ainsi que font les hommes, non pas seulement en joignant les levres, mais en ouvrant aussi la bouche, cela s'entend en pigeonne, la langue en bouche ; et encore qu'elle n'eust point le membre viril, et qu'elle fut semblable à nous autres, si est ce qu'elle disoit avoir le cœur, l'affection et tout le reste viril ; et puis je l'embrassay comme un homme, et elle me le faisoit, me baisoit et allentoit ; je n'entends point bien ce mot, et me sembloit qu'elle y prit plaisir outre mesure, et cohabita d'une certaine façon plus agreable que d'un homme ; voilà ce qu'en dit Lucian.

Or à ce que j'ay ouy dire, il y a en plusieurs endroits et regions force telles Dames Lesbiennes en France, en Italie et Espagne, Turquie, Grece, et autres lieux ; et où les femmes sont recluses, et n'ont entiere liberté, cet exercise s'y continuë fort ; car telles Dames bruslantes dans le corps, il faut bien, disent elles, qu'elles s'aydent de ce remede pour se rafraischir un peu, ou du tout qu'elles bruslent.

Les Turques vont aux bains, plus pour cette paillardise que pour autre chose, et s'y addonnent fort ; mesme les Courtisannes, qui ont les hommes à commandement et à tout heure, encor usent-elles de ces fricarelles, s'entrecherchent et s'entr'aiment les unes les autres ; comme je l'ay ouy dire en Italie, et en Espagne ; en nostre France, telles femmes sont assez communes ; et si dit-on pourtant, qu'il n'y a pas long-tems qu'elles s'en sont meslées, mesme que la façon en a esté portée d'Italie par une Dame de qualité, que je ne nommeray point.

J'ay ouy conter a Monsieur de Clermont Tallard le Jeune, qui mourut a la Rochelle, qu'estant petit garçon, et ayant l'honneur d'accompagner Monsieur d' Anjou, depuis nostre Roy Henry Troisiesme, en ses estudes, et estudier avec luy ordinairement, duquel Monsieur de Gournay estoit Precepteur, un jour estant à Thoulouze, estudiant avec son dit maistre dans son cabinet, et estant assis dans un coin à part, il vid, par une petite fente, (d'autant que les cabinets et chambres estoient de bois, et avoient esté faits à l'improviste et à la haste, par la curiosité de Monsieur le Cardinal d'Armagnac, Archevesque de là, pour mieux recevoir et accommoder le Roy, la Reyne, et toute la Cour) dans un autre cabinet deux fort grandes Dames, toutes retroussées, et leurs calleçons bas, se coucher l'une sur l'autre, s'entrebaiser en forme de colombe, se frotter, s'entre-frotter, s'entrefriquer, bref se remuer fort, paillarder et imiter les hommes, et dura leur abbatement pres d'une bonne heure, s'estant si fort eschauffées, et lassées, qu'elles en demeurerent si rouges, et si en cauë, bien qu'il fit grand froid, qu'elles

n'en

n'en peurent plus, et furent contraintes de se reposer autant ; et disoit, qu'il vid joüer ce jeu quelque autre jour, tant que la Cour fut là, de mesme façon ; et onques n'eut plus telle commodité de voir cet ebattement, d'autant que ce lieu le favorisoit en cela, et aux autres il ne peut.

Il m'en contoit encor plus que je n'en ose escrire, et me nommoit les Dames ; je ne scay s'il est vray, mais il me l'a juré et affirmé cent fois par son serment ; et de fait cela est fort vray-semblable ; car telles deux Dames ont bien eu tousjours cette reputation de faire et continuer l'amour de cette façon, et de passer ainsi leur temps.

J'en ay connu plusieurs autres, qui ont traité de mesmes amours, entre lesquelles j'en ay ouy conter d'une de par le monde, qui a esté fort superlative en cela, et qui aimoit aucunes Dames, les honoroit, et les servoit plus que les hommes, et leur faisoit l'amour comme un homme à sa Maistresse, et les prenoit avec elle, les entretenoit à pot et à feu, et leur donnoit ce qu'elles vouloient ; son mary en estoit tres-aise, et fort content ; ainsi que beaucoup d'autres marys que j'ay veu, qui estoient fort aises que leurs femmes menassent ces amours, plustost que celles des hommes, n'en pensans leurs femmes moins folles ny putains : mais je croy qu'ils sont bien trompez, car ce petit exercise à ce que j'ay ouy dire, n'est qu'un apprentissage pour venir à celuy grand des hommes ; car après qu'elles se sont eschauffées, et mises bien au rut les unes les autres, le chaleur ne se diminuant pour cela, il faut qu'elles se baignent par une eauë vive et courante, qui raffraischit bien mieux qu'une eauë dormante ; ainsi que je tiens de bons Chirurgiens, et veu, que, qui veut bien penser et guerir une playe, il ne faut pas qu'il s'amuse à la medicamenter, et la nettoyer alentour ou sur le bord, mais il la faut sonder jusques au fond, et y mettre une sonde et une tente bien avant.

Que j'en ay veu de ces Lesbiennes, qui pour toutes leurs fricarelles et entrefrottements, n'en laissent d'aller aux hommes ; mesme Sappho, qui en a esté la Maitresse, ne se mist-elle pas à aymer son grand amy Faon, après lequel elle mourut ; car en fin, comme j'ay ouy raconter à plusieurs Dames, il n'y a que les hommes ; et que de tout ce qu'elles prennent avec les autres femmes, ne sont que des tiroüers, pour s'aller paistre de gorge chaudes avec les hommes ; et ces fricarelles ne leur servent qu'à faute de hommes ; que si elles les trouvent à propos, et sans scandales, faisoient bien leurs compagnes, pour aller à eux, et leur sauter au collet.

J'ay connu de mon temps deux belles et honestes Damoiselles de bonne maison, toutes deux cousines, lesquelles ayant couché ensemble dans un mesme lict l'espace de trois ans, s'accoustumerent si fort à cette fricarelle qu'après

qu'après s'estre imaginées que le plaisir estoit assez maigre et imparfait, au prix de celuy des hommes, se mirent à le taster avec eux, et en devinrent deux bonnes putains, et confesserent après à leurs amoureux, que rien ne les avoit tant esbranlées, ny eschauffées que cette fricarelle, la detestant pour en avoir esté la seule cause de leur desbauche ; nonobstant quand elles se rencontroyent, ou avec d' autres, elles prenoient tousjours quelque repas de cette fricarelle, pour y prendre tousjours plus grand appetit de l'autre avec les hommes : et c'est ce que dit une fois une honneste Damoiselle que j'ay connuë, à laquelle son serviteur demandoit un jour, si elle ne faisoit point cette fricarelle avec sa compagne, avec qui elle couchoit ordinairement ? ah non, dit elle en riant, j'ayme trop les hommes ; mais pourtant elle faisoit l'un et l'autre.

Je scay un honeste Gentil-homme, lequel desirant un jour à la Cour purchasser en marriage une fort honeste Damoiselle, en demanda l'advis à une sienne parente.

Elle luy dit franchement, qu'il y perdroit son temps ; d'autant, luy dit elle, qu'une telle Dame, qu'elle luy nomma, et de qui je scavois des nouvelles. ne permettra jamais qu'elle se marie.

J'en connu soudain l'encloüeure, par ce que je scavois bien qu'elle tenoit cette Damoiselle en ses delices à pot et à feu, et la gardoit precieusement pour sa bouche.

Le Gentil-homme en remercia sa dite cousine de ce bon advis, non sans luy faire la guerre en riant, qu'elle parloit ainsi en cela pour elle, comme pour l'autre ; car elle en tiroit quelques petits coups en robbe quelquesfois, ce qu'elle nia pourtant.

Ce trajet me fit ressouvenir d'aucuns, qui ont ainsi des putains à eux mesmes, qu'ils ayment tant qu'ils n'en feroient part pour tous les biens du monde, fut à un Prince, à un Grand, fut à leur compagnon, ou à leurs amys, tant ils en sont jaloux, comme un ladre de son barillet, encor le presente-t'il à boire à qui en veut.

Mais cette Dame vouloit garder cette Damoiselle toute pour soy, sans en departir à d'autres ; pourtant si la faisoit elle cocuë à la derobade avec aucunes de ces compagnes.

On dit que les belettes sont touches de cet amour, et se plaisent de femelle à femelle à s'entre-joindre et habiter ensemble ; si que par lettres hieroglyfiques les femmes s'entr'aimantes de cet amour, estoient jadis representées par des bellettes.

J'ay ouy parler d'une Dame qui en nourissoit tousjours ; et qui se mesloit de cet amour, et prenoit plaisir de voir ainsi ses petites bestioles s'entrehabiter.

Voicy un autre point, c'est que ces amours feminines se traitent en deux façons, les unes par fricarelles, et par, comme dit ce Poëte, *geminos committere cunnos.*

Cette façon n'apporte point de dommage, ccdisent aucunes, comme quand on s'aide d'instrument façonné, mais qu'on a voulu appeller des Godemichys.

GESNERI Theſaurus, v. *Tribas.*

Tribas, -adis, *f.* (τριβας,) mulier quæ in ſexum ſuum libidinem exercet ; τρίβω, idem valet quod *frico*, tero. *Tribades* itaque dici poſſunt Latinè *Fricatrices*, de quibus Juven. 6. ſat. 310.

Inque vices equitant, &c. Hoc libidinis portentum deſcribit Martialis, lib. i 91. quod inſcribitur, *In Bassam tribadem.* Id ſceleris primo inſtituiſſe dicuntur Leſbiæ mulieres. Unde apud Ariſtophanem λεσβιαζειν et λεσβιζειν id agere eſt. Talis fuit Sappho, ut ipſa fatetur : et propterea dicitur ab Hor. 1. epiſt. 19. 28. ' *Masculа Sappho.*"

Rogavit alter tribadas, et molles mares,
Quæ ratas procreaſſet, &c.

PHÆDR. 4. 14. 1.

FACCIOLATI's *Lexicon.*

Tribas, -adis, *f.* τριβας, h. e. fricans, a τριβω. Dicitur de fœmina turpem libidinem cum pari exercente: quam Plaut. Perſ. ii. 2. 45. ſubagitatricem vocat. *Phædr.* b. iv. *Fab.* 14; and *Martial, L.* 7. *Epig.* 66. & 69.

ENCYCLOPEDIE METHODIQUE, Art. JURISPRUDENCE, Vol. IX.; *Amour Saphique*, p. 320.

AMOUR SAPHIQUE. Nous nous servons de ce mot, pour désigner une sorte de dépravation d'instinct, qui porte une femme à chercher dans des personnes de son sexe, des jouissances que la nature a placées pour elle dans celui de l'homme. Un ouvrage qui doit indiquer les désordres de la civilisation, pour en mieux faire connoître les remèdes, ne devoit pas passer sous silence

cette

cette erreur des sens et de l'imagination, dont le goût trop repandu, pourroit pervertir les mœurs, et altérer le bonheur qui résulte de l'accord et de l'*amour* des sexes.

Plutarque prétend que les femmes de Lacédémone, étoient quelquefois consumées du feu de cet amour, dont brûla *Sappho*, et qui a ellemême dépeint dans ses vers, les symptomes de ce mal terrible. On peut l'envisager comme le comble de toutes les perturbations, dont l'ame du sexe fut susceptible dans la Grèce : quant au principe de ce mal, il est possible qu'une organisation vicieuse en ait été la cause première, mais on ne doit pas douter que l'usage immodérée des vices de Lacenie, encore plus violens que ceux de Lesbos, n'ait beaucoup contribué a l'aigrir dans des individus, qui s'y trouvoient déja naturellement disposés. Ce qu'il y a d'etonnant, c'est que cet *amour* illusoire, ne guérissoit point de l'*amour* réel, et que Sappho étoit tellement entraînée par ces deux chaînes à la fois, qu'elle dut avoir recours au saut de Leucade : mais on ne sait point positivement si elle y termina ses jours, ou si elle fut du nombre de ceux, qui se faisoient appliquer, comme dit *Strabon*, des plumes et des ailes, dans l'espérance de se soutenir après leur chûte, sur les eaux de la mer, où ils étoient ensuite secourus par les prêtres d'Appollon, qui prétendoient que cette immersion calmoit les fureurs érotiques. Ils traitoient les amoureux, comme les mêdecins traitoient de leur côtés, les hydrophobes ; car, à de grands maux, il falloit, disoit-on, de grands remèdes.

Il ne paroît pas que l'*amour saphique*, ait été aussi en vogue chez les Romains, que dans le Grece. Cette partie du monde étoit faite pour offrir des modèles de vertus, de vices et d'excès en tous genres. La délicatesse des organes, l'influence du climat, les fruits, les liqueurs, l'air, tout portoit aux plaisirs des sens, et à ce qui peut la multiplier. Les femmes, quoique moins soumises à ces effets que les hommes, n'en ressentoient pas moins de fortes atteintes ; et le défaut que nous leur reprochons ici, en est la preuve.

De nos jours l'*amour saphique*, vit dans le secret, et n'est point un désordre public. Quelques femmes, en petit nombre à la vérité, en paroissent atteintes, mais celles qui le sont, portent cette dépravation à un excès qui n'est pas croyable. C'est parmi les prostituées qu'il faut s'instruire des fureurs et des folies dont elles sont capables. Qu'on se rapelle ce que dit Lucien, dans le troisième dialogue des courtisannes, voila le tableau de leurs étranges voluptés, qui, si nous en croyons *Brantome*, etoient très à la mode de son temps.

La police n'a aucun pouvoir sur ce vice. Il est secret, il est obscure, et c'est plutôt une maladie de l'imagination, produite par la contrainte, la captivité.

captivité, l'effervescence des sens, qu'un désordre positif. Il est commun dans les cloîtres, et dans quelques sociétés de femmes. C'est à la religion, à la bonne société, à l'amour naturel, à detruire ce penchant, bien moins dénaturé que celui qui y est analogue chez les hommes, quoiqu'aussi odieux. Ces femmes sont appellées *tribades*, nous pourrons encore en parler sous ce mot.

REFERENCES.

BAYLE, article *Sappho*, and the authors quoted by him.

MASSINGER's Plays.—Bondman, Act. 2. Sc. 2.

Confessions d'une Jeune Fille, in *L'Espion Anglois*; Vol. i. p. 197.

Paris as it was, and as it is; Vol. ii. p. 214. London, 1803.

MIRABEAU's Secret History of the Court of Berlin; Letter 47.

The well known and popular novel, *The Nun*, by DIDEROT, is founded upon this practice; Vol. ii. *passim*.

SECOND DIVISION.

OCTOBER 10. 1811.

ADD. PET.—MISSES WOODS and PIRIE,
AGAINST
An INNER-HOUSE Interlocutor.

Ja. Balfour, W. S. Agent for Pet^rs.

Lady CUMMING GORDON, Respondent.
MACKENZIE & INNES, W. S. Agents.

Mr MACKENZIE, Clerk.

UNTO THE RIGHT HONOURABLE

THE LORDS OF COUNCIL AND SESSION,

THE

ADDITIONAL

PETITION

OF

Miss MARY-ANN WOODS, and Miss JANE PIRIE, lately residing at Drumsheugh, near Edinburgh;

HUMBLY SHEWETH,

THAT the petitioners have inſiſted before your Lordſhips in an action for reparation, of one of the deepeſt injuries that ever was inflicted on two individuals, againſt Lady Cumming Gordon, widow of the late Sir Alexander Cumming Gordon of Altyre and Gordonſtone, Baronet.

In that action, an interlocutor unfavourable to the petitioners, has been pronounced, by the narroweſt poſſible majority of the Court; and, conſidering the ſtrong doubts and heſitation expreſſed by thoſe of your Lordſhips who concurred in the judgment, and

the awful importance of the queſtion at iſſue to the petitioners, they humbly ſubmit the interlocutor to review.

The petitioners, though unmarried, have lived ſome time in the world. They are both the children of reſpectable parents. From their infancy, they were educated in the ſtricteſt principles of religion and morality, and taught to reverence and practiſe all the duties and the reſtraints which Chriſtianity enjoins. They hope they are not inſenſible of their own defects; but, in ſuch a cauſe as this, they may be permitted to ſay, under the ſanction of the proof, that the paſt years of their lives have been ſpent in one continued ſeries of anxious and laborious exertions, to fill their minds with the knowledge which elevates the human character, and to cultivate,—by correctneſs of principle,—by propriety of manners,—and by ſober induſtry, the friendſhip and eſteem of the wiſe and the good. They had early determined, each for herſelf, to devote themſelves to an honourable and uſeful profeſſion,—a profeſſion which, of all others, ſuppoſed the moſt habitual attention to the honour of the female character, and to the religious ſenſe of its indiſpenſable obligation. Their ſtudies, their habits, their employments, and their feelings, had taught them to abhor any thing even approaching to indelicacy, in the mind or manners of a woman. And under the weight of the calamity which has recently fallen upon them, it is, next to the humble but aſſured conſciouſneſs of their own innocence, their greateſt conſolation, that, in the various ſituations in which they have been placed, and in all their efforts to render themſelves uſeful members of ſociety, —among their relations,—their friends—and all thoſe with whom they have aſſociated, their conduct has been above reproach.

Miſs Woods, who is the *elder* of the two petitioners, is of the age of *twenty-eight*. She is the daughter of a reſpectable merchant-tailor in London, and niece of the late reſpectable comedian Mr Woods. She was early put under the charge of her uncle. By him ſhe was educated in the ſtricteſt principles, and taught all thoſe branches of uſeful knowledge by which ſhe might be enabled to maintain herſelf in independence. She never was on the ſtage, and was not permitted to frequent the theatre. Before the death of her uncle, ſhe aſſiſted him in teaching reading and elocution privately. After his death, ſhe ſupported herſelf by the ſame employment; and in her intercourſe with the numerous families to whom ſhe became known, ſhe has the happineſs to think, that her conduct was ſuch as uniformly to obtain their good opinion, while it conciliated the warmeſt friendſhip of many reſpectable individuals, with whom ſhe has lived in more intimate habits.

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The other petitioner, Miſs Pirie, is of the age of *twenty-ſeven*. She is the daughter of Mr Pirie, writer in Edinburgh. She alſo received a moſt liberal education, and ſpared no pains to qualify herſelf for the profeſſion of a governeſs, which ſhe had determined to proſecute. After finiſhing her education, ſhe lived ſucceſſively in the following families, the reſpectability of all which is well known to your Lordſhips, viz. the families of General Dirom, Captain Lowes, the Earl of Lucan, under Mrs Hamilton, Mr Macdowall Grant, Mrs Campbell of Kailzie, and Mrs General Campbell. In all theſe ſituations, her character, both for principle and correctneſs in her private conduct, and for unwearied attention to the improvement and the morals of her pupils, was firmly eſtabliſhed.

The two petitioners firſt became acquainted about nine years ago. They met at a drawing-ſchool, and ſoon formed a cloſe intimacy. Their purſuits being of the ſame nature, they aſſiſted one another in them; and their intimacy gradually increaſed into a ſettled and very ſincere friendſhip. They little thought, that that warm and intereſting mutual regard, which ſprings from the fineſt and pureſt feelings of the human heart, and can only exiſt in pure and virtuous breaſts, ſhould be to them the ſource of the fouleſt condemnation, or be converted into the means of fixing upon them an imputation of the blackeſt and moſt diſguſting atrocity.

The petitioners, however, did form a friendſhip for one another of the ſtrongeſt and warmeſt nature, which ſubſiſted without alloy for many years. During a great part of this time they were much ſeparated from one another. But their friendſhip continuing unabated, they pleaſed themſelves with the idea of forming a joint eſtabliſhment in buſineſs; while, in the mean time, by their ſeparate exertions and painful ſavings, they were endeavouring to provide the means of entering upon it. As the time approached when they were likely to be able to put their ſcheme in execution, Miſs Woods gave up her other employments, and for twelve months devoted her time to her own improvement in the particular buſineſs on which ſhe was about to enter. The petitioners formed the greateſt expectations from the projected ſchool. They determined to give up every thing elſe. They ſunk all the money which they had ſeverally acquired. They changed in ſome degree their ſtudies. With the moſt conſcientious reſolution to do their duty to the children entruſted to them, and the laudable ambition to diſtinguiſh themſelves in their profeſſion, they reconci-

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led their minds to a life of inceſſant labour, anxiety, and confinement. And they looked, in ſhort, to this eſtabliſhment as the whole foundation of their future fortunes and reſpectability in the world.

The expectations which they formed were, it is humbly thought, juſtly formed. From the pains they had beſtowed on their own education; from the habits of unremitting induſtry which they had acquired; from their experience in the education of young women; from the ſucceſs with which they had ſeen their exertions attended; and from the high eſteem, in which they were proud to find themſelves with many individuals of the community eminently qualified to appreciate their qualifications, they had ſtrong reaſons to anticipate diſtinguiſhed ſucceſs. And their mutual friendſhip for one another did then ſeem to furniſh an additional earneſt of proſperity in their undertaking.

Unfortunately, the petitioners, placing too much reliance in their confidence in one another, did not arrange with preciſion the terms of their copartnery before entering upon buſineſs. And circumſtances ſoon aroſe, to create on the one hand jealouſies and diſcontents, and on the other thoſe painful feelings, and that diſtreſſing perplexity, which your Lordſhips may well underſtand to be produced by the ſenſe of a friendſhip ſo formed being broken.

The ſchool was opened by Miſs Woods at Whitſunday 1809. Miſs Pirie being under engagement with Mrs Campbell till Martinmas following, could not join till that term. But ſhe contributed her ſhare of the expence; and though it was not expected that much could be done till winter, it was thought expedient that every thing ſhould be fully arranged ſome months before. In this ſituation, Miſs Woods took along with her her aunt Mrs Woods, with whom ſhe had before reſided. During that half year, there were only two young ladies in the ſchool, Miſs Hay and Miſs Sandford, and a Miſs Clendinning, who had before lived with Mrs Woods.

In November 1809, Miſs Pirie joined Miſs Woods. After this, the ſchool gradually filled. In December 1809, Miſs Jane Cumming, a native of India, by a woman of colour, and who had lived in India till the age of about eight years, and grandaughter of Lady Cumming Gordon, was offered as a ſcholar. There was a heſitation in receiving her; but in conſideration of the reſpectability of the family, and by the influence of Lady Cumming, Miſs Pirie was induced to receive her. After Miſs Cumming, there followed ſucceſſively two Miſs Dunbars, Miſs Dewar, Miſs Auſtruther,

Anſtruther, Miſs Hunter, two Miſs Edgars, Miſs Cunningham, Miſs Stirling, Miſs Munro, and two Miſs Fraſers. So that, upon the whole, the ſucceſs of the ſchool was more than equal to the moſt ſanguine expectations of the petitioners.

From the time that Miſs Cumming came to the ſchool, in December 1809, till it was broken up in November 1810, ſhe ſlept conſtantly in the ſame bed with Miſs Pirie, excepting during a few weeks in the ſummer holidays.

The excellence of the ſchool thus eſtabliſhed, and the pains beſtowed by the petitioners, are admitted and abundantly proved. In every thing they conſulted only the intereſt of the young perſons entruſted to them. Even in the external arrangements of the houſe, they diſregarded their own convenience or comfort, and conſidered what was beſt for their pupils. There were only two proper bed-rooms. In each of them one of the petitioners ſlept, in order that the young ladies might at all times be under the obſervation of one of their miſtreſſes; and they left a third room, which might have been uſed as a bed-room for themſelves, as a general dreſſing-room for the ſchool. It is in evidence, that during the whole day, there was ſcarcely a moment, in which one or other of the petitioners was not employed in ſuperintending the education or the conduct of their ſcholars. From morning till night they were conſtantly ſo employed. They attended ſtrictly to the moral habits of the children in the moſt minute particulars. They taught them the regular practice of religious duties; and took pains to inſtruct them in the principles of religion. They devited puniſhments for their faults, calculated to correct and improve them. And, in a word, they laboured with inceſſant vigilance to cultivate and elevate their minds, at once by uſeful knowledge, and by the principles and habits of virtue. Theſe are facts admitting of no denial.

But, in the mean time, the petitioners themſelves were, during the laſt ſix months at leaſt, paſſing their lives in the utmoſt miſery. Circumſtances originating in the reſidence of Mrs Woods in the houſe, and ſome miſapprehenſion in the tradeſmen who had been employed before Miſs Pirie joined the ſchool, excited a jealouſy in the mind of Miſs Pirie, who thought herſelf degraded, and repreſented as the governeſs of Miſs Woods, inſtead of being herſelf one of the miſtreſſes of the ſchool. Having once taken up this idea, ſhe could not diveſt herſelf of it; and notwithſtanding the ſincerity and warmth of her regard for Miſs Woods, circumſtances were conſtantly occurring which Miſs Pirie con-

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ſidered to be affronting to her, and which ſeemed to exclude all cordiality while Mrs Woods ſhould remain. On the other ſide, Miſs Woods and her aunt had intended nothing diſreſpectful or injurious to Miſs Pirie. Miſs Woods was under great obligations to her aunt, and very ſtrongly attached to her. And while the keenneſs of Miſs Pirie's feelings on the ſubject led to frequent altercations, Miſs Woods, on her part, thought herſelf ill uſed by Miſs Pirie, both by the manner in which the ſubject was ſometimes urged, and by the diſtreſſing ſituation into which ſhe ſaw herſelf brought in regard to Mrs Woods. Who was right, or who was wrong, in theſe diſputes, is now of no conſequence. But that theſe differences exiſted and went to a great height; that they are no pretences now raiſed up, but indiſputable realities; and that they led to frequent quarrels, for at leaſt ſix months before the ſchool broke up; are matters proved beyond doubt, in the evidence before your Lordſhips. It is farther *quite clearly proved*, that theſe diſputes were *at their very height*, from the *end of Auguſt* till the middle or end of *October*; a fact of the very laſt importance in this cauſe.

But amidſt all theſe diſputes, the petitioners, though they found their friendſhip broken by diſtruſt, and embittered by repeated altercation, could not but retain a great portion of that virtuous affection for one another, which they had ſo long before cheriſhed. It is clearly in evidence that this was the fact, by documents never meant to meet the eye of any one but the petitioners themſelves. It is in evidence by their conduct, and by their communications to others at the time. And as it was the courſe of nature that theſe feelings ſhould remain, ſo it was the courſe of nature that the ſtruggle between jealouſy, ſuſpicion, diſappointment and wounded pride; and on the other hand, the recollection and remains of paſt confidence and long cheriſhed regard; ſhould be productive of ſtrong expreſſions of feeling, and of apparent irregularities in their deportment to one another. Accordingly, theſe things are alſo in evidence, by the letters of the parties, and by the aſcertained fact, in ſpite of the prejudiced, if not polluted, imagination of one of the witneſſes, that, in their reconciliations, after having quarrelled, they ſhewed ſtrong marks of natural but virtuous feeling to one another.

Your Lordſhips, however, will be aware, that, from the very nature of the thing, the young ladies at the ſchool could have but a very imperfect idea of the nature or extent of theſe diſputes. It muſt evidently have been an object with the petitioners

to conceal them as much as poſſible. The good of the ſcholars, and the ſucceſs of the ſchool, depended upon this concealment. And accordingly in fact they were at infinite pains, notwithſtanding the ſtate of irritation in which they lived, to keep their differences unknown; ſo much ſo, that, if it had not been for the exiſtence of their letters, for the knowledge which Mrs Woods poſſeſſed, and for ſome few occaſions when their feelings betrayed them, it might have been impoſſible to convey to your Lordſhips any adequate idea of the fact. As the matter ſtands, both the fact, and the deſire of concealment, are proved beyond doubt.

As already obſerved, the differences were at their greateſt height from the end of Auguſt till the middle or end of October. Even then the petitioners, being in a perpetual ſtate of conſtraint during the whole day, had little opportunity of ſeeing or talking to one another until after the ſcholars were all in bed. But by this time Mrs Woods had declined all intercourſe with Miſs Pirie, and took her meals in her own room. The conſequence was, that as ſoon as the young ladies had gone to bed, Miſs Woods retired into her aunt's room to ſupper, while Miſs Pirie ſupped by herſelf in the ſchool-room. This is in proof.

Your Lordſhips know, that, by the form of the houſe, and the ſituation of the rooms, Miſs Pirie, after undreſſing in the dreſſing-room, neceſſarily paſſed through the room in which Miſs Woods ſlept, in order to get to her own; and on the other hand, Miſs Woods, in going from her aunt's room, neceſſarily, or at leaſt moſt naturally, paſſed through Miſs Pirie's room. But it is in evidence that Miſs Pirie at all times ſlept with *a bed-gown, an under petticoat and ſtockings;* and that on the other hand, when Miſs Woods left her aunt's room after ſupper, ſhe was always *in her day-dress.*

Before there was any evidence, the petitioners readily informed your Lordſhips, that at this period one or other of them almoſt always paſſed through the room of the other after ſhe was in bed; that upon a few occaſions they ſtopped and converſed, either ſtanding by the ſide of the bed, or ſitting or reclining upon the edge of it; that they ſpoke in a low tone of voice, and were anxious both not to diſturb the young ladies, and to prevent them from hearing the ſubject of the converſation. They alſo informed your Lordſhips, without reſerve, that in one inſtance Miſs Pirie, in a ſtate of great anxiety and agitation, from a quarrel which had happened the day before, and on which ſhe had had no opportu-

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nity of explanation, had gone from her own bed to the bed-room of Miſs Woods, and had ſat down or reclined by the ſide of the bed while ſhe converſed with her, certainly in as low a tone as the ſtate of her feelings permitted; and that though Miſs Woods never was at any time in the bed of Miſs Pirie, it was remembered, that on one occaſion ſhe had ſat with her aunt till day broke, and Miſs Pirie having been kept awake, by hearing their converſation through a lath partition of two inches, called to Miſs Woods as ſhe paſſed through the room, and a converſation of mutual kindneſs and forgiveneſs followed.

All this appeared to the petitioners, and, with great deference, when ſtated plainly and without colour, evidently was, a natural reſult of the circumſtances, if it be only admitted that the petitioners, like other perſons of honour and virtue, were capable of ſtrong feelings, when excited by natural cauſes; and they could hardly have anticipated, that, inſtead of receiving credit for the candid ſtatement which they had made of real circumſtances, it ſhould be turned againſt them as an indication of guilt. Theſe occurrences, however, paſſed away with the occaſion which produced them; though the private unhappineſs of the petitioners remained. It was determined that Mrs Woods ſhould leave the family; and it is clearly in evidence, that, long before the diſcloſure of the abominable imputation on the petitioners, it had been formally reſolved that they ſhould ſeparate. It was thought neceſſary to continue the buſineſs together till Whitſunday, in conſequence of their engagements already formed; and though Miſs Woods felt ſeverely the injury in the ſeparation from her aunt, ſhe ſubmitted to it for a ſhort time as a matter of neceſſity; and the parties hoped that the ſchool might be conducted with more peace and cordiality during the ſix months that were to come.

In the mean time, though Miſs Jane Cumming had been in the ſchool, and had conſtantly ſlept with Miſs Pirie ſince November 1809, though the Miſs Dunbars had been day boarders from January, and though Miſs Munro had been there for two months, the petitioners never heard the ſlighteſt whiſper or hint of any falſe conſtruction put upon their conduct, or of any imputation injurious to their character. Miſs Cumming, indeed, was very frequently ſubjecting herſelf both to the ordinary puniſhments of the ſchool, and to the pointed reproofs of her miſtreſſes. The buſineſs and the diſcipline were much ſtricter than ſhe had been accuſtomed to; and while, to the laſt, ſhe profeſſed ſtrong and even fawning regard for both the petitioners, it was eaſy to diſcover

that

that ſhe diſliked the whole conſtraint of the ſchool, and in her heart reſented the diſgraces to which the diſcipline expoſed her.

This was the ſtate of the affairs of the petitioners, their quarrels being ſo far arranged, the ſchool continuing proſperous and eminent, and no hint of diſſatisfaction with their conduct having appeared,—when, on the 14th day of November 1810, the petitioners were, without notice, without inquiry, and without any communication of the cauſe, at once, by the acts of the defender, involved in irretrievable ruin. Upon the day preceding, Miſs Cumming had gone home to her grandmother's upon leave: ſhe ſtaid all night, but *returned to the ſchool* next day. It appears that ſhe had in the mean time told the whole of that infamous ſtory which ſhe has ſince dared or attempted to detail. But it is well worthy the obſervation of your Lordſhips, that this young lady, after having made ſuch a ſtatement to her grandmother, *did* return to the ſchool, and did treat both the petitioners with the ſame reſpect, apparent confidence and cordiality, as if nothing had happened. Conſidering the ideas which ſhe has ſince ſworn ſhe had, without aſſiſtance, formed in her own mind, this confeſſed diſſimulation, in whatever way directed, accords ill with the ſimplicity and undiſguiſing innocence which were at firſt attributed to her. After her return to the ſchool on the 14th ſhe was again taken away, and Lady Cumming wrote a note to the petitioners, in which, without aſſigning any reaſon, ſhe deſired Miſs Cumming's clothes to be ſent home. Upon the ſame day and the next, all the ſcholars were taken away, one after another, without any cauſe whatever being aſſigned. It turned out, that all this proceeded at the inſtigation of Lady Cumming, acting, as her counſel expreſſed it in the hearing, on the teſtimony of Miſs Cumming, as 'a ſimple, innocent, veracious girl,' and giving '*implicit credit*' to her ſtatement;—an opinion and a confidence in which, it is believed, not one of your Lordſhips who has heard the teſtimony of the ſame girl upon oath, will concur. But while the defender, giving implicit credit to her own granddaughter, and to all appearance abſolutely regardleſs of the dreadful ruin ſhe was bringing on the petitioners, was effecting that ruin by the moſt efficient means which could have been deviſed, the petitioners themſelves remained in utter ignorance of the cauſe. The reflections upon this, ſtart up ſo quickly to every man's feeling, that it is unneceſſary to ſuggeſt them. But the petitioners pray the attention of your Lordſhips to their own conduct in this trying ſituation, as it carries with it the real evidence of conſcious

 innocence,

innocence, more powerfully than perhaps ſuch a conſciouſneſs ever was proved in any caſe of criminal charge or ſuſpicion that ever came before your Lordſhips.

It is, with ſubmiſſion, as plain as the ſun at noon-day, that the petitioners were in no affected ignorance, but in a real and abſolute darkneſs as to the ground or poſſible cauſe of their ruin. In anſwer to Lady Cumming's note of the 14th November, the petitioners wrote in the moſt reſpectful terms to Lady Cumming: 'Miſs Woods and Pirie beg leave to addreſs Lady Cumming Gor-'don. There has been ſome delay in the execution of her Lady-'ſhip's commands; but, as ſoon as poſſible, they will be attended 'to. The extreme anxiety of mind they are in can alone excuſe 'the earneſt entreaty they now make to her Ladyſhip, that ſhe will 'candidly ſtate to them every particular circumſtance which has 'occaſioned her Ladyſhip's diſapprobation, and by its conſequences 'ſeems to threaten their total ruin.'

This note was expreſſed in reſpectful, in natural, and in gentle terms, implying at once the earneſt deſire of information, and the belief that it would not be withheld. But it received *no answer*, written or verbal. If the petitioners had been conſcious of the infamous guilt now imputed to them, muſt they not have now believed that they were detected, and that nothing but diſgrace could follow on any farther inquiry, more eſpecially as Miſs Cumming and Miſs Munro have ſince pretended that they had taken pains at the time to make the petitioners acquainted with their obſervations? How then did they proceed? Did they deſiſt from urging a more explicit diſcloſure? Miſs Pirie immediately addreſſed the following letter to Miſs Mary Cumming, the ſecond daughter of the defender; and, in reading it, your Lordſhips will not fail to obſerve how natural it was to Miſs Pirie, when her feelings were ſtrongly excited, to expreſs them in ſtrong language. 'If ever you expect mercy from the God of Mercy, tell what 'your niece has ſaid to injure two innocent perſons, who have 'laboured for nearly twelve months to improve her in every reli-'gious and moral virtue, and who are thus cruelly repaid by her. 'We never did any thing to offend her, *excepting too rigidly diſ-'charging our duty towards her, and too freely telling her of her 'faults.*' You are again implored, for the ſake of that God from 'whom you hope for mercy, to tell us of what ſhe accuſes us, as 'the calumny has been traced to her, and ſhe appears to be the 'ſole author of it. If ever Chriſtian mercy or pity had a place 'in your heart, do not delay to ſtate all ſhe ſays againſt us, as

'every

' every hour's delay increaſes the miſery ſhe has already occa-
' ſioned.' The nature and the urgency of the terms here employ-
ed, demonſtrate that there was no affectation and no hardened
impudence in the requeſt, but that the ignorance was real, and
the mode of aſking information the natural reſult of the myſte-
rious ſilence with which the ruin of the petitioners had been ef-
fected. But even to this no anſwer was given. The petitioners
tried other means. Miſs Pirie's ſiſter, againſt whom no objection
could be ſtated, called on Lady Cumming to aſk an explanation.
But to her alſo it was peremptorily refuſed.

And your Lordſhips have no occaſion to truſt to any ſtatements
of the petitioners as to their actual ſtate, or the reality of their ig-
norance at this time, ſince you have it ſo well and ſo convincing-
ly deſcribed in the admirable depoſition of Lady Cunningham. She
ſtates, that after receiving a hint that there was ſomething wrong,
ſhe had called on Mrs Profeſſor Dalzel, and, after relating her
converſation there, ' depones, That from Mrs Dalzel's, the wit- Proof, p. 128.
' neſs, in company with Miſs Dryſdale, Mrs Dalzel's ſiſter, drove D, E, F, G,
' to Drumſheugh, and called for Miſs Woods, whom they ſaw. H, I.
' Depones, That the witneſs ſaid to her, ' I ſuppoſe you know the
" purpoſe of my coming here this morning?' and Miſs Woods re-
' plied, ' I too well judge it.' Depones, That the witneſs then
' ſaid to her, ' Miſs Woods, I don't know what has happened, but
" I am grateful to you for the kindneſs and attention you have al-
" ways ſhewn to my daughter; there is only Miſs Dryſdale, you,
" and I preſent, if you have done any thing imprudent, and will
" diſcloſe it confidentially to me, you may rely on my advice and
" aſſiſtance to the utmoſt of my power, to extricate you from the
" ſcrape, if poſſible, whatever it may be:' That Miſs Woods *was*
' *much affected*, and, *with great emotion*, thanked the witneſs for her
' kindneſs, but ſaid, ' ſhe could not avail herſelf of it, *for ſhe was*
" *herſelf utterly ignorant of what was laid to her charge*, and *was not*
" *conſcious of any thing*.' And the Judges Commiſſioners think it
' proper here to take down, that Lady Cunninghame was herſelf
' much affected when ſhe narrated theſe circumſtances. And ſhe
' added, that *Miss Woods, then in great agitation*, THREW HER ARMS
' ROUND MISS DRYSDALE, *and earneſtly entreated her and Mrs Dalzel*
' *to endeavour* TO FIND OUT OF WHAT SHE AND HER PARTNER WERE
' ACCUSED. Depones, That the witneſs was ſo extremely affected
' with Miſs Woods' behaviour, that ſhe ſaid to her, that ſhe could
' not bring herſelf to take her daughter from her, under ſuch cir-
' cumſtances, but would at leaſt delay it till next morning; but

' Miſs

'Miſs Woods herſelf ſaid to her, that as all the chief ſcholars were 'already gone, ſhe thought it was better that the witneſs ſhould 'alſo take her daughter; but the witneſs perſiſted, and left her 'daughter till the next day.'

The facts diſcloſed in this ſtatement, ſpeak far too powerfully for themſelves to be aided by any remark. The conduct of Miſs Woods, in the preſence of two women of high reſpectability; the genuine emotions of nature evinced in it; the earneſt declaration of her ignorance; the entreaty to Miſs Dryſdale to find out of what ſhe was accuſed; above all, the act of throwing her arms around Miſs Dryſdale, implying at once the confidence that ſhe was entitled to the protection of virtuous perſons, and the abſolute impoſſibility of her having even dreamed of a charge of *venus nefandu;* and laſtly, the effect produced by the whole ſcene upon a woman of high character, ſenſe, and feeling; exhibit to your Lordſhips the realities of evidence of the total unconſciouſneſs of Miſs Woods, of any approach to ſuch a crime as that of which ſhe has been accuſed.

At laſt, by dark and diſtant hints, the petitioners, to their aſtoniſhment, learned that they were accuſed of ſomething of the laſt atrocity, of which neither their knowledge, nor their imaginations, and far leſs their conſciouſneſs, could give them any idea. And how, then, did the petitioners conduct themſelves in this trying ſituation? Did they take guilt to themſelves, and fly from the country, or the place which had been the ſcene of their iniquity? Did they ſubmit in ſilence to the ruin which had been thus brought upon them? Were they content to eſcape the puniſhment which the law might inflict upon ſuch infamy? Such is uniformly the conduct of thoſe, who are conſcious of unnatural crimes, and ſee that they have been detected. But very different was the courſe purſued by the petitioners. They aſſerted their innocence in the face of the world, and againſt all the hard means which had been uſed to ruin them. They ſought and obtained the protection of ſome who had before been their friends. They raiſed this action before your Lordſhips, to compel Lady Cumming to tell them what ſhe had told to ſo many others, and to vindicate their characters in the face of the public.

And in bringing their action, did they proceed as perſons conſcious of guilt? Or did they raiſe it even with the advantage which they might, and perhaps ought to have uſed? They knew, it appears, that whatever the charge was, it originated principally with Miſs Cumming; and if they had been conſcious of guilt, they

muſt have known that the immediate authors of the calumny, would be witneſſes to the truth of it. What hindered them to have made Miſs Cumming, and perhaps even Miſs Munro, a party defender in the action? As to Miſs Cumming, there cannot be a doubt of it. And in what ſituation would Lady Cumming have then found herſelf, if the petitioners had only uſed their right? There would then have been abundance of declamation about the conſcious guilt appearing from that form of the action. And are not the petitioners entitled to credit for their forbearance, and for the confidence diſplayed in diſdaining to take even a fair advantage? With great ſubmiſſion, the defender ought, in bare juſtice, to acknowledge that the petitioners did every thing which women could do, to ſhew that they had no conſciouſneſs of guilt, and no fear of the reſult.

When the cauſe came into Court, Lady Cumming gave in defences in general terms, in which, founding on her recommendation of the ſchool, and alleging, that ſhe had only in one or two inſtances ſtated, ‘ that ſhe had reaſon to believe that the conduct ‘ of the purſuers had been highly indelicate and improper,’ ſhe ſtated the material averment in theſe words: ‘ She learnt from ‘ unqueſtionable authority, that they practiſed together acts of ‘ groſs immorality and ſhameful indecency, and that their guilt ‘ was aggravated by the occaſional commiſſion of thoſe offences in ‘ the preſence of young ladies entruſted to their charge. Aſſuming the defence to be relevant, ſhe farther ſaid, ‘ the defender ‘ is ready to ſpecify the facts on which it reſts with whatever ‘ minuteneſs the Court may require, and to eſtabliſh them by ‘ competent and concluſive evidence.’

The general ſtatement in theſe defences afforded the petitioners but a very dark and imperfect notion of what was really meant to be alleged. They looked anxiouſly for the more particular ſtatement to be made; and they are in the judgment of your Lordſhips, whether, throughout the proceedings, they did not ſubmit themſelves implicitly to the orders and directions of your Lordſhips, giving every facility to a full and fair inquiry.

The cauſe was heard before Lord Meadowbank, with ſhut doors. Then, for the firſt time, came forth the moſt minute and high-coloured detail, intended and expreſsly directed to the averment that the petitioners had been guilty of *venus nefanda* with one another, as the averment upon which Lady Cumming did peril her defence. Nothing like the ſtatement then given has ſince appear-

ed. The whole matter was repreſented in ſuch a light as to make the Lord Ordinary, and to make the petitioners' counſel. fully believe, that it was meant to be aſſerted that Miſs Cumming had ſeen with her eyes the facts which were ſo detailed. And it was moſt particularly and pointedly averred, no doubt on the ſame unqueſtionable authority with the reſt, that the infamous conduct of the petitioners had become ſo notorious, that they could not go out without being hooted at by the people at the Water of Leith. The petitioners pray, it may be remembered, that the laſt averment was pointedly made on the authority of Miſs Jane Cumming.

A ſecond hearing took place, when it appeared, that Miſs Cumming did not pretend to have *ſeen* any thing; and the whole ſtory about the women at the Water of Leith was now given up. There were various other contradictions, and the ſtory, though it retained much of its firſt colouring, evidently declined in the particular averments.

The Lord Ordinary now found it neceſſary to order the defender to make a written ſtatement of facts. In the two previous verbal ſtatements, it had been moſt pointedly aſſerted, with no ſmall richneſs of deſcription, that a maid-ſervant had repeatedly *ſeen* the petitioners in the very act of the alleged venereal congreſs; and when it appeared that Miſs Cumming did not pretend to have *ſeen* any thing, this remained as in truth the only deciſive averment made by the defender. A written ſtatement was given in; and therein, for the third time, the defender made the aſſertion in the following words: 'A ſervant-maid in the 'houſe *repeatedly ſaw* Miſs Woods and Miſs Pirie in improper ſi-'tuations, and uſing indecent familiarities with each other.' And then, after mentioning a pretended converſation of the maid with ſome of the elder girls, the defender ſaid, 'the maid informed them 'that one day, going to ſeek for ſomething wanted for the houſe, 'ſhe found both the drawing-room doors locked, and *looking* '*through the key-hole*, ſhe ſaw Miſs Woods and Miſs Pirie lying *on* '*the ſofa* in an improper manner.' The petitioners wiſh to remark, 1. That this was the *third* time that the defender had pointedly aſſerted *as a fact* that the maid *had ſeen* certain things; and, 2. That there was no mention of the maid having ſeen, or having *ſaid that ſhe ſaw* any thing in the drawing-room, or on the ſofa, except upon *the one occaſion* of finding *both doors locked*, and *looking through the key-hole*.

After

After this the cauſe was reported to your Lordſhips; and then a fourth ſtatement was given verbally, differing materially from all the three former, but in which the ſtatement as to the maid was ſtill adhered to *in toto*. Your Lordſhips ordered a condeſcendence. A condeſcendence was given in, which differed in many particulars from the written ſtatement, and all that had preceded. But it differed moſt eſſentially in this, that *the whole* ſtory, both as to what the maid had alleged to have ſeen, and as to what it had been alleged ſhe ſaid ſhe ſaw, and as to what ſhe was ſaid to have done, *was entirely left out*.

The petitioners muſt here ſtop, to fix it in your Lordſhips' view that the whole ſtatement, which had been made on the ſame authority with all the reſt of the averments, was deliberately omitted. That it was omitted for ſome good reaſon, was obvious at a ſingle glance. But why was it omitted? The defender has never ſaid that ſhe had examined Charlotte the maid, or that ſhe had looked at the houſe, and found the fact averred to be impoſſible. But yet the moſt direct fact averred, was retracted, for no better reaſon given, than that the defender did not know what the maid would ſay if examined!

When the petitioners put in anſwers to the condeſcendence, they took notice of this moſt extraordinary omiſſion; and they then informed your Lordſhips that there was *no key-hole in either* of the doors of the drawing-room, and that it was beſides impoſſible to ſee the ſofa from either door. That there was a falſehood in the ſtatement was therefore certain. It will hereafter be ſeen how Miſs Cumming, having evidently recollected or gained information of the impoſſibility, endeavoured to cure both the ſtatement and the condeſcendence by a ſtory entirely new, in her depoſition.

Your Lordſhips, on ſeeing the omiſſion, and the fact to meet it, required the defender to ſay whether ſhe adhered to that part of the ſtatement or not. In obedience to which the defender ſtated, 'that the defender does mean, under the fifteenth article of her 'condeſcendence, to include an offer to prove the circumſtances 'related in the ſtatement, reſpecting the converſation and con-'duct of the maid-ſervant as alluded to in the interlocutor of the 'Court.' The petitioners underſtood at the time, that by this minute the defender adhered to the whole ſtatement as to the maid, both in what ſhe had been alleged to have ſeen, and in what ſhe had been alleged to have ſaid or done. It turned out, however, that, by the reference to the pages of the ſtatement, the defender now confined her averment to the alleged

ged converſations and conduct of the maid, and had abandoned altogether the aſſertion of her having actually ſeen any thing.

It is proper here to ſtate, that, from the circumſtances under which the anſwers to the condeſcendence were prepared, a few inaccuracies crept into the paper. It was only ordered on the 2d of March; and the petitioners, far from avoiding or delaying the proof, lodged it on the 7th of the ſame month; and at that time of the ſeſſion, it was unavoidably prepared in conſiderable haſte, and by the junior counſel not before in the cauſe. The petitioners do not wiſh to ſay much upon this; but as there is one part of it, in anſwer to the 4th article of the condeſcendence, in which there is ſome inaccuracy, and likewiſe an omiſſion ariſing from mere delicacy, which has led to ſome miſapprehenſion, they will afterwards explain the fact, as it was explained upon the margin of a copy of the anſwers given to their counſel, before one word of the proof had been taken.

In the anſwers, the petitioners directed the attention of your Lordſhips to the form of the houſe, the dimenſions of the bedrooms, and the number and ſituation of the perſons who ſlept in each. And your Lordſhips were afterwards ſatisfied of the correctneſs of that ſtatement by actual inſpection, and reported accordingly.

Now, in all theſe proceedings, it muſt be admitted to the petitioners, that, even though doubts were entertained by the Lord Ordinary of the relevancy or competency of the proof, and though very ſerious grounds of argument might have been maintained on that point; they, inſtead of oppoſing a proof, expreſsly moved your Lordſhips, in the anſwers to the condeſcendence, to allow the proof to proceed.

And thus, from firſt to laſt, every one act of the petitioners implied in the ſtrongeſt poſſible manner their firm confidence in their own innocence; notwithſtanding the conviction that was forced upon them, that ſome very groſs falſchoods and miſrepreſentations muſt have been made to their prejudice.

A proof now took place under the eye of ſeveral of your Lordſhips, and particularly under the conſtant and immediate direction of the Head of the Court. To that proof it will be neceſſary preſently to attend.

When the proof was concluded, a hearing in preſence took place. In that hearing, the junior counſel of the defender, while he maintained broadly, that the petitioners had been guilty of an unnatural luſt, of a ſpecies of *venus nefanda*, did make a ſubordi-

nate

nate attempt to plead a ſeparate juſtification for the defender, upon the allegation, that, whether the fact of *venus nefanda* had been proved or not, the defender had ſufficient ground for what ſhe had done, and had acted *in bona fide* without any *animus injuriandi*. The ſenior counſel of the defender ſcarcely attempted to maintain, that there was evidence of an unlawful or unnatural practice. He argued, that if there was proof of *any* indecency or *any* impropriety, it was enough to juſtify the defender, and almoſt declined to go farther in ſupport of the allegation on which the parties had gone to proof. And a further attempt was made to ſhew, that the defender had not been active in circulating the calumny.

On adviſing the cauſe, your Lordſhips were much divided in opinion. The Head of the Court, and the Lord Ordinary, were quite clear of the perfect innocence of the petitioners; and one more of your Lordſhips concurred in that opinion. But even thoſe of your Lordſhips who were againſt the petitioners, expreſſed your opinions as formed with great doubt and heſitation; ſo much ſo, that one moſt eminent Judge, (whom the petitioners can no more addreſs,) ſaid, that if the petitioners were upon trial, his verdict as a juryman would be *not proven*. But, at laſt, by the narroweſt majority, the following interlocutor was pronounced: 'The Lords 'having adviſed the ſtate of the proceſs, writs produced and teſti- 'monies of the witneſſes adduced, and heard the counſel for the 'parties in their own preſence, with ſhut doors; ſuſtain the de- 'fences, aſſoilzie the defender, and decern; but ſuperſede extract 'till the firſt box-day in the enſuing vacation; and if a reclaim- 'ing petition ſhall be then printed, marked, and diſtributed to the 'Judges under ſeal, ſuperſede extract further till the ſame be diſ- 'poſed of, and appoint the ſame to be ſeen and anſwered; the 'anſwers to be printed, marked, and diſtributed as above, againſt 'the ſecond box-day in the enſuing vacation, under an arrand of '40s. ſterling; and the Lords declare, that the oath of ſecrecy 'impoſed on the agents ſhall apply to the petition and anſwers, 'as well as to the ſtate of the proceſs already printed.' Dated 25th, ſigned 9th June 1811.

In humbly ſubmitting this interlocutor to review, it occurs to the petitioners, that the firſt thing to be attended to is the nature of the injury of which they complain.

Conſidering all that has paſſed, it might ſeem very unneceſſary to do more on this point, than ſimply to ſtate, that the petitioners had been repreſented to the world as guilty of an infamous crime; ſo infamous that it never was before heard of in this country;

and that of conſequence, if the charge be falſe and not proved, the party who raiſed it muſt anſwer in damages for one of the moſt atrocious calumnies that ever was diſcuſſed in a court of juſtice. And yet, after all the high colouring with which the ſubject had been embelliſhed, it formed, to the amazement of the petitioners, a part of the defender's argument, moſt anxiouſly laboured by her counſel, to depreciate the extent and atrocity of the libel, and to repreſent it as no more than a reaſonable diſſatiſfaction with the management of the ſchool. With great ſubmiſſion, ſuch an argument is adding inſult to the groſſeſt injury. Is it a matter of doubt, that what the defender did and ſaid, ſhe did and ſaid upon the ground of a charge of the groſſeſt infamy? Is it doubted that it was by that charge, and by that alone, that the ruin of the petitioners was effected? Not contented with acting for herſelf, ſhe circulated cards to every perſon connected with the ſchool; and when, *of courſe*, required to explain herſelf in ſo extraordinary a proceeding, ſhe told the particulars from which ſhe inferred the charge of unnatural lewdneſs.

Here the petitioners muſt beg leave to obſerve, that it is moſt unfair in the defender to avail herſelf of the delicacy which reſtrained the petitioners' counſel, and reſtrained the Court, in the examination of women of high character and feeling. It is moſt manifeſt, for example, that the diſcloſure at laſt made to Lady Cunninghame contained the particulars of what was repreſented as an infamous crime. It is plain, that nothing elſe would have convinced her without inquiry; but your Lordſhips refrained from deſiring her to mention the particulars; and upon this abſtinence the defender pretends to colour the caſe, as if ſhe had given a mere general ſtatement of diſſatisfaction ſufficient to weigh with Lady Cunninghame. But the real evidence ſpeaks for itſelf. Your Lordſhips have ſeen how Lady Cunninghame was affected, and how ſhe conducted herſelf upon general ſurmiſes to the prejudice of the petitioners. Now, ſee what followed, even in the mind of a woman who had ſhewn ſo much feeling and ſo ſtrong a ſenſe of juſtice towards the petitioners. Lady Cunninghame depones.

State, p. 129. C, D, E, F, G.

'That Miſs Woods expreſſed herſelf very grateful to the witneſs 'for her kindneſs, in being the firſt perſon, during the two preceding days of trial, who had entered the houſe, or ſpoke a word 'to her on the ſubject, the others having ſent for the girls without 'any kind of communication. Interrogated, depones, That after 'leaving Lady Cumming Gordon's, as formerly deponed to, ſhe 'returned to her at the diſtance of about three hours, and Lady

'Cumming

'Cumming Gordon then communicated to the witneſs THOSE PARTICULARS *which had induced her* to take away her grandchildren 'from the purſuers' ſchool. Interrogated, depones, That *upon the 'witness bearing these circumstances*, ſhe ſaid to the defender, 'Bleſs "me, Ma'am, are you ſure of it?' and Lady Cumming Gordon 'anſwered, 'O yes, you may rely upon it, *there is no doubt at all "about the matter*;' and the deponent made no farther inquiry as 'to her Ladyſhip's authority. Depones, *That upon this the witness 'sent for her daughter from school.* Depones, That Miſs Weſton, 'after this, had very great difficulty in taking the witneſs's 'daughter into her ſchool, ſome of the parents of her ſcholars having objected; and the witneſs underſtood from what Miſs 'Weſton ſaid, that if her daughter had been examined as a witneſs 'in this caſe, ſhe muſt have left the ſchool. And further depones, 'That Miſs Weſton poſitively refuſed to the witneſs to take two 'other young ladies, on account of their having been at the pur-'ſuers' ſchool.'

The petitioners need add nothing to this. It is too plain for argument, that the communication to Lady Cunninghame, the ſame communication which had been made to others, muſt have been of the moſt ſhocking nature. It would be eaſy to ſhew, that the whole originated in the ſame ſource. But the petitioners will not trouble your Lordſhips with any other reference, but to the very extraordinary and unwarrantable letter of Lady Cumming herſelf to Mrs Stirling of Kippenroſs, in which, in plain words, it is ſaid, that '*the story is so horrible*,' &c.; and after repeatedly ſaying to Mrs Stirling that they ſhould make *a common cause* of it, &c. the defender ſays, 'It is already known, that Miſs Stirling has corro-'borated the other girls' teſtimony, and ſhould *we* fail in eſtabliſh-'ing a complete proof, it lands *all who are concerned*, in the charge of 'being the inventors of THIS MOST HORRIBLE STORY.' The petitioners forbear applying to this letter the obſervations which it naturally ſuggeſts, and which did not eſcape the notice of your Lordſhips. In paſſing, they requeſt your Lordſhips to read it, merely as an example of the blind credulity with which the defender had received the ſtatement of her grandaughter, and of the determined raſhneſs with which ſhe had ventured to ſupport her veracity. But at preſent the particular point to be obſerved is, that ſhe herſelf twice deſcribes the libel upon which ſhe was proſecuted as nothing elſe than a '*most horrible story*.' And further in that letter ſhe admits, that by circulating that horrible ſtory, *ſhe* had been '*the* '*means* of removing the children of other mothers from a ſitua-'tion

State, p. 154, 155.

—— p. 155. B.

' tion which I ſhould have look'd on it as ruin to my own to have
' remained in.'

It is therefore the moſt futile of all pleas, to allege, that Lady Cumming was not the author of the calumny, and of that ſhocking calumny which alone could have brought ſuch inſtant ruin upon the petitioners. It is ſtill worſe than futile to attempt ſuch a plea, at the very ſame inſtant that her counſel are raking up all the books of obſcenity that ever were written, in order to prove, that the ſaid horrible ſtory agreed with the infamous practices there detailed. It is quite in vain to deny, that it was *an unnatural crime* which Miſs Cumming meant to deſcribe; and it was an unnatural crime to which Lady Cumming referred when ſhe ſpoke of *this horrible ſtory*. And this being the nature of the libel, the inevitable conſequence of the mere mention of it by a perſon of the defender's reſpectability, was the complete ruin of the petitioners, *whether the accuſation were true or falſe*. Unleſs your Lordſhips ſhall give redreſs,—unleſs the petitioners had been enabled to raiſe this action,—with the moſt perfect innocence, with the abſolute certainty of the falſehood of every part of the charge, they would ſtill have been ruined for life. The very whiſper of ſuch a thing was abſolutely deſtructive of their future proſpects. Far be it from the petitioners to detract any thing from the high reſpectability of the defender and her family. But the ſting of this calumny is in the ſhocking nature of it, proceeding from ſuch a quarter. If they had been accuſed of any thing elſe—of murder—of theft—of corrupting their pupils—of adultery—or of any other known crime; they would have ſeen where to meet the attack, and upon the iſſue of what facts the reſult muſt depend. And if they had been accuſed from a leſs reſpectable quarter, the abſurdity of the charge might poſſibly have been ſufficiently anſwered, by the known correctneſs and integrity of the petitioners. But here the petitioners were abſolutely ruined before they even heard the accuſation. They could not meet a charge of which they were utterly ignorant, and to this inſtant never had a conception; and it was hard to think, that a perſon of the defender's ſenſe, ſhould give her mind to ſo cruel an imputation without due and complete inquiry.

The petitioners muſt be forgiven for farther obſerving, that the myſtery with which the defender conducted the ſcandal,—the half ſentences,—hints,—inſinuations,—alluſions to ſomething too horrible to be ſpoken of,—ſeals of ſecrecy, &c., far from mitigating, aggravated the injury tenfold to the petitioners. It was ſtabbing

the

the petitioners in the dark,—wounding them where they had no defence,—producing all the miſchief, whether they were guilty or innocent,—while, to their rights as parties uncondemned, to the poſſibility of their innocence, *not one chance* of innocence or vindication was left. Lady Cumming, it ſeems, gave implicit credit to her grandaughter, and upon that credit determined to ruin the ſchool of the petitioners; but by her own account, inſtead of boldly avowing her reaſon in the face of the public, ſhe whiſpered it under ſeals of ſecrecy to all *the persons with whom the fate of the petitioners rested.* Let the defender make the moſt of this plea. If the petitioners can judge by their own feelings, or by any thing that they have read or heard of human conduct, it is the moſt grievous aggravation of a deliberate injury that the moſt wanton cruelty could have invented.

The petitioners complain, then, of an injury by which they loſt their all;—their all in fortune;—but ſtill more their all in character, which they valued above every thing elſe, and on which their very exiſtence in ſociety depended. And they complain of this injury as inflicted, not with a cautious, a ſparing or reluctant hand, but with every circumſtance of hard ſeverity of which the nature of the caſe admitted.

What is the *defence* ſtated againſt this claim of reparation? It is not that the defender had acted on miſtake or miſapprehenſion: It is not that ſhe had been miſled: It is not that ſhe had given too implicit credit to her grandaughter or others: It is not that ſhe was diſſatisfied with the petitioners without implicating their characters. The defence is plainly and broadly the *veritas convicii;* —the truth of the charge, not of *any* impropriety, or of *any* indecency, or of *any* irregularity of conduct, but the infamous crime of *venus nefandia*,—of unnatural luſt,—of the moſt infamous of all offences. It conſiſts in the truth of '*this horrible story*,'—as it was told to individuals,—as it was detailed at the firſt pleadings,—as it was recorded in the written ſtatement, and in the condeſcendence which followed,—as it was repeated in the opening of the hearing in preſence,—as it was illuſtrated by the numerous obſcene books referred to, and the analogy drawn to the fables of *Brantome*,—as it was attempted to be ſuſtained againſt all authority by the text in the Sacred Scriptures,—as it was expounded in the opinion of Mary Brown, that the petitioners *ought to be burnt*,—and in ſhort, as it was aſſerted, inſinuated, hinted, and made to be believed, as the moſt infamous caſe of which the records or the experience of this country afforded any example.

Whatever ſubterfuges may be employed, this is the defence, or it is nothing. No mere form of words, ſuch as 'acts of immor-'ality and ſhameful indecency,' will veil or conceal the reality, that as the libel was the imputation of an infamous crime, ſo the defence is an attempt to prove the truth of that infamous crime. The defender cannot be permitted now to ſay, that ſhe will not fix the nature of her accuſation. She fixed it long ago; and ſhe has done her utmoſt to ſupport it from firſt to laſt. The petitioners aſk your Lordſhips, Whether, if ſhe had not offered ſo to prove it, your Lordſhips would have liſtened to a defence, grounded upon ſome ſlight impropriety of conduct, in anſwer to a charge of libel, by the imputation of an unnatural crime? Why were all the details made, and why was the ſpecial condeſcendence required, if any impropriety, or any indecency was ſufficient for the defence? With great ſubmiſſion, the petitioners cannot conceive a harder caſe on the petitioners, or one more completely untenible on the part of the defender, than to maintain, that ſhe ſhall be juſtified, by any thing ſhort of the *cleareſt* proof of the unnatural crime imputed to the petitioners.

A man of rank and influence circulates a report, that a perſon of inferior ſtation, but hitherto of high character, has been guilty of an unnatural crime, of ſomething ſo horrible as to render him unworthy to live in ſociety, or to be ſupported in his buſineſs or profeſſion. The ſtory takes, and the man is ruined. He raiſes an action for redreſs. The defence is expreſſed in general terms, but is detailed in the pleadings by particular facts, anxiouſly illuſtrated as *the ſame* with the groſſeſt deſcriptions of *ſodomitical* practices. Theſe details are put in a condeſcendence, avowedly for the purpoſe of proving the general practice of ſodomy. In the proof an attempt is made to eſtabliſh this general fact. But after all, the defender gravely inſiſts, that though he has failed in proving ſodomy, he has proved fornication, or that the man was once tipſy; and having proved *any* impropriety or indecency, he concludes that to be a juſtification of the calumny.

A ſchoolmaſter is accuſed of rape upon the girls attending the ſchool. He loſes his ſchool and is ruined. Being innocent, he brings his action for redreſs. *Rape is averred*, and the times and places condeſcended upon. The proof of rape totally fails; but it comes out, that he had not been regular in his attendance on the ſchool. And this is pleaded as a juſtification!

The defence at laſt attempted by the defender, is, however ill founded in the facts, preciſely of this deſcription. She wiſhes to

eſcape

eſcape from the real libel of unnatural crime, and to ſubſtitute ſomething in its place. But, with great ſubmiſſion, the petitioners did not bring their action, becauſe the defender was diſſatisfied with their ſchool. Their action is for redreſs, becauſe ſhe did accuſe them to the public as guilty of *unnatural acts and paſſions.* She repeated her averment to the Court twenty times at leaſt; and ſhe joined iſſue upon it. And after all this, nothing can be more frivolous, than to maintain a juſtification, upon any thing elſe than the queſtion of *proved* or *not proved,* in regard to the allegation of an *unnatural crime or propenſity.*

As to the general nature of this averment, there can be no doubt whatever. The purſuer has diſtinctly aſſerted, that the petitioners held congreſſes with one another, with the intention and for the purpoſe of gratifying the venereal appetite, contrary to the laws of God and nature. She has endeavoured to characteriſe the nature of the acts which ſhe thus charges, by a vaſt maſs of learning, to prove that women may have and may gratify unnatural luſts with one another. And if this learning has any meaning whatever, it muſt be that that of which the petitioners are accuſed, is to be referred to ſome deſcription of unnatural lewdneſs, which the defender holds up as a true deſcription, or a deſcription of ſomething that actually did or could have happened. Nothing can be more obvious, therefore, than that the eſſence of the charge againſt the petitioners lies in the imputation of an *intention* to ſeek the gratification of the venereal appetite with one another.

And in the few obſervations which they ſhall farther make upon the nature of this alleged crime in general, and upon the manner in which it is particularly qualified in this caſe, they truſt that their arguments will not be miſunderſtood. Very far indeed are they from maintaining, that the defender cannot prevail without proving that there was an actual conſummation by the venereal criſis, or even that that was certainly poſſible. Their counſel formerly ſtated to your Lordſhips, and it is now repeated, that if there be evidence that the petitioners in any inſtance ſought venereal pleaſure, they have no caſe. If Miſs Pirie ſo much as approached the bed of Miſs Woods, or Miſs Woods ſo much as approached the bed of Miſs Pirie, with the view or intention of obtaining venereal gratification, it is admitted, that whether that gratification was obtained or not, or to whatever extent it was obtained, and whatever might be the nature of it, the petitioners have no caſe. But the queſtion is, upon the evidence, *Whether there*

there existed any such intention or not? It is not to be inferred from *equivocal* facts that admit of a different ſolution; and therefore, with great ſubmiſſion, every caſe that is put, in which the acts aſſumed *neceſſarily preſuppoſe the intention* of obtaining venereal pleaſure or excitation, (ſuch as reading obſcene books,) is foreign to the remarks of the petitioners on the nature and circumſtances of the charge in this caſe. Once more: it never was ſuppoſed, and, with ſubmiſſion, never was ſaid by the petitioners, that there muſt be proof a criſis to warrant a judgment againſt them. On the contrary, they admit, as explicitly as words can admit, that if there be evidence of the lewd intention of gratifying or exciting venereal appetite by intercourſe with one another, they muſt ſtand condemned.

But ſtill your Lordſhips will be pleaſed always to remember, that the eſſence of the charge againſt them lies in the imputation of acts done *with that unlawful intention.* Without *ſuppoſing ſuch intention*, it is a perfect jeſt to ſpeak of indecencies or improprieties. The defender may maintain, that the facts proved are true; and ſhe may maintain, that, being true, they of neceſſity imply the criminal or lewd intention. That is a queſtion upon the evidence and the nature of the thing. But ſtill, whether ſhe ſpeaks directly of what ſhe calls *tribadism*, or of *venus nefanda*, or of groſs indecency, or of ſhameful immorality, the eſſence of the charge muſt always lie in the allegation, that the petitioners came to one another's beds, *in the purſuit of the gratification of unnatural luſt.*

Truſting that your Lordſhips will fully enter into this ſtatement, and that the nature of this argument has been explained with ſufficient preciſion, the petitioners think they may ſtate with certainty, that the queſtion at iſſue is, Whether it is proved to the conviction of your Lordſhips, that the petitioners did commit acts with one another, for the purpoſe, or with the intention of, gratifying or exciting the venereal appetite?

Now, in this queſtion of *proved* or *not*, the very firſt thing that occurs is, that, though the petitioners are accuſed generally of lewdneſs, the ſort of lewdneſs imputed to them, as it is explained even *generally* by the defender, is a thing altogether unknown and unheard of. It is ſomething that never was under the eye of a court of juſtice in the whole hiſtory of the world till this inſtant.

Here, again, the petitioners truſt they ſhall not be miſunderſtood. It was never denied, that women might abuſe their bodies with one another. Digitation, or the uſe of inſtruments, no doubt,

have been practiſed among females. And it is from the laſt of theſe practices, that the women referred to in the ancient writers by the name of Τριβαδες, derived their name and character. As the petitioners are not at all curious in this queſtion, and do by no means intend to vie with the defender's counſel in their learning on the ſubject, or to go farther than making a few remarks, they will trouble your Lordſhips with only one authority for this aſſertion. It is one, however, of no ſmall weight; nothing leſs than the Greek Lexicon of *Scapula*, publiſhed in 1519. Under the derivatives of the verb τριβω, is this article: 'τριβὰς, τριβάδος, ἡ, fricatrix; 'τριβάδες, dicuntur fœminæ perditæ libidinis ac nefariæ laſciviæ, 'quæ ὀλισβῳ sese τρίβωσιν mutuo;' *Cæl. Aurel. Chron. &c.* And ὀλισβος is thus defined: '"Ολισβος, υ, ὁ, *penis coriaceus, quo* im-'probæ τριβαδες libidinis prurituin excitabant; Ariſtoph. &c.' This requires no commentary. The deſcription, and the only deſcription, of the *Tribades* is, that they committed their infamous acts with one another, by means of the ολισβος, or *penis coriaceus*.

Whether, independent of any inſtrument, and independent of the direct uſe of the hands, there may, in particular parts of the world, have been women ſo formed as to be capable of gratifying one another, it ſeems very unneceſſary here to inquire. It appears to the petitioners, that the defender has not been able to ſhew any ſufficient authority even for this as a matter of fact. The Dialogue of Lucian, as obſerved by the Lord Ordinary, while, in itſelf, it is a work of imagination, proves directly the contrary. The defender, indeed, referred to obſcene books; in which, it is well known, that the human imagination is put to the rack, to *invent* modes of gratifying the venereal paſſion, having no exiſtence in nature. She referred alſo to ſome old lawyers who write about *witchcraft* and other imaginary crimes, the reality of which, from the mere myſtery of them, might be believed in a credulous age, though utterly unfounded in fact or reaſon. And at laſt, the *main* authority upon which ſhe reſted was *Brantome;* a Gaſcon writer, whoſe numerous errors—and eſpecially his tendency to hyperbole, and his own credulous diſpoſition, are particularly remarked by Bayle in various parts of his work.

Index to the English tranſlation of Bayle's General Dictionary, *voce Brantome*, and the paſſages there referred to.

It is on ſuch authorities as theſe that the defender ſupports her charge, and expects to render Miſs Cumming's ſtory probable. No caſe of any trial and conviction for ſuch an offence can be pointed out. And it is indeed remarkable, that, in the only thing approaching to ſuch a caſe mentioned among all the authorities of the defender, it appears, that two unfortunate women, accuſed by private malice or the ſuperſtitious ignorance of the age in which they

See Paponius, p. 6. defender's authorities.

Rex v. Jul. Jii observett. medic.

they lived, were, without evidence to convict them of any thing, actually *put to the torture* to extort a confeſſion, and after all *dismissed as innocent*.

But the defender alleged, that this crime was mentioned in the New Teſtament. And if ſhe were right, it is the only one of all her authorities entitled to the ſlighteſt regard. But firſt of all, your Lordſhips will remember, that there is no mention of any ſuch thing in the law of Moſes, or in all the books of the Old Teſtament. The paſſage on which the defender founds, is in the 1ſt chapter of the Romans: 'For this cauſe God gave them up unto vile affections; 'for even their women did *change the natural use into that which is* 'against nature.' It is very evident, that even ſuppoſing this paſſage had referred to ſome infamous congreſs between two women, the proper inference would be, that it was by the uſe of an inſtrument. But, with ſubmiſſion, it appears quite clear to the petitioners, that the practice referred to was that of *sodomy* between a woman and a man. The women changed *the natural use* into *that* which is *against nature*; and the next verſe goes on to ſpecify the ſodomy of men, 'And likewiſe alſo, the men leaving the natural 'uſe of the woman, burned in their luſt, one toward another, men 'with men,' &c. *Changing the natural use of the woman's body* was enough to deſcribe the one caſe; becauſe there was but *one* way known in which it could be changed, and that implied alſo the perverſion of the man; but the ſeparate caſe was, that of a *man* with a *man*, which was accordingly particularly ſpecified. Hence, this text has been ſo underſtood by the beſt commentators. David
1608. Pareus, a German Profeſſor of Theology, of the firſt authority, explains it thus: 'Poſtea ſpeciatim exprimit utriuſque ſexus nefandam 'ἀκαθαρσίαν, quod tum fœminæ non contentes venere ſecundum naturam in vaſe ordinato, etiam ad eam, quæ eſt præter naturam, *ad* 'praposteros sodomiticos concubitus sese MARIBUS *prostituerint*. Tum 'maſculi, relicto naturali fœminarum uſu, in mutuam venerem libidine exarserint,' &c. There can be no doubt of this learned perſon's underſtanding of the text. *Matthew Henry* mentions unnatural luſts, for which he ſays, many of the heathen particularly Solon and Zeno were infamous; but he explains this particularly, by 'the crying iniquity of *Sodom* and *Gomorrah*.' Poole, an Engliſh Divine, deſcribes the vices in queſtion in general, as 'unnatural practices;' and he quotes the opinion of *Pareus* above recited, *and expressly adopts it as his own*. Athanaſeus and Calvin ſpeak in general terms, without attaching any more preciſe meaning to the words, than that of a crime againſt nature. But what has been ſaid, is abundantly ſufficient to ſhow, that the text does

not

not ſerve the purpoſe of the defender, and that the proper meaning of it, is that ſtated by Pareus.

The petitioners, however, have ſaid more upon this than they intended. Clear it is, that the practice, as a general crime between women without the uſe of inſtruments, or of their hands is a thing totally unknown in this country. And conſequently, it is ſo violently extravagant in its own nature, as to create, even upon the mere general ſtatement of it, the moſt monſtrous improbability of the truth of it in this caſe. *Prima facie* it is *morally incredible*; unleſs the defender had expreſsly alleged either the uſe of an inſtrument, or the actual uſe of the hands, or at leaſt particular conformation; not one of which has been ſtated or attempted to be proved.

But if the charge is in the very higheſt degree improbable, upon the mere general ſtatement of the nature of it, it becomes infinitely more ſo, upon the attempt to qualify it by particular facts. In the hearing, the ſenior counſel of the defender confeſſed his total inability to give any name to it. He ſaid it was *a luſt*; and that was all that he could make of it. He could not deſcribe it as *any known mode* of gratifying, or *ſeeking* the gratification of the venereal appetite.

Here the petitioners hope your Lordſhips will underſtand, that they aſſert every one of the facts which the defender repreſents as concluſive, to be either directly falſe, or of the moſt ſimple and innocent nature. And the obſervations which they are now making, proceed on no imagination of the truth of the defender's averments, but are only introduced as neceſſarily ariſing out of the nature of the caſe, and calculated to lead to a juſt appreciation of the evidence.

As already obſerved, if there be evidence of venereal intention, the petitioners have no caſe. But, with great ſubmiſſion, in the outſet of the inquiry as to the evidence of that fact, it is ſurely a material conſideration, that, upon no ſtate of the fact given, does the defender condeſcend upon any known mode of venereal gratification. The facts ſtated do not accord with any ſtatement yet given of the infamous practices referred to. The defender has not ventured to ſtate any compariſon between the facts, even as ſtanding on the face of Miſs Cumming's depoſition, and *any* deſcription, however fabulous or imaginary, of ſuch unnatural venery. In a word, there is here no fact, in which your Lordſhips *can with certainty* diſcern the venereal propenſity. No allegation of an inſtrument: No allegation of fingers: No allegation of particular conformation:

conformation: *No allegation of any of the consequences of venereal intercourse.* The intention to be proved muſt here be inferred from facts of a totally different order—facts which, falſe as moſt of them are, do not neceſſarily conclude the venereal propenſity;—nay, facts which, put together, are inconſiſtent with all ordinary ideas of ſuch gratification. The petitioners will have occaſion to take notice of theſe things more particularly upon particular branches of the proof. In the mean time, it is humbly ſubmitted as an obſervation of importance, though not at all neceſſary to the caſe, that even the facts alleged do not deſcribe with any certainty the fact of the venereal congreſs. Without previouſly aſſuming the venereal propenſity, what is there criminal or improper in one woman coming into the bed of her friend? Or what is there wonderful in two women who were upon ſuch intimate habits, and undoubtedly in a ſtate of great excitation with regard to one another, converſing together in whiſpers, when there were five or ſix young perſons aſleep in the room? If the recollection of former friendſhips—the regrets for unreſtrained paſſion—the contending feelings of pride, jealouſy, and affection, called forth ſtrong emotions, would it be wonderful that ſome accidental motion of the bed ſhould take place? Nay, even the pulling up of the ſhifts, *utterly falſe as it is*, would conclude nothing. They might be pulled up by accident; and Miſs Cumming herſelf was forced to depone, that *her own ſhift* had got up without any particular reaſon. The petitioners cannot for an inſtant reaſon on theſe facts as true, becauſe they are moſt groſsly falſe. But yet putting the very worſt ſtate of the caſe, the defender cannot make out the general charge, without *abſolutely aſſuming* an intention, which is the very thing to be proved.

If a man and a woman are in bed together, venereal congreſs would be preſumed. And perhaps, even if a man and a man are in bed together without neceſſity, an unnatural intention may often be inferred. But a woman being in bed with a woman, cannot even give a probability to ſuch an inference. It is the order of nature and of ſociety in its preſent ſtate. If a woman embraces a woman, it infers nothing. And therefore, in order to convict two women of unnatural propenſities, there ought to be facts concluding the intention, without the aid of any aſſumption or inference, and neceſſarily excluding every other ſuppoſition.

And before leaving this, the petitioners have another remark to make, which they humbly think to be of very material importance. The defender, in ſupport of her caſe, referred to the writings

tings of old phyſicians, who wrote centuries ago. The fact which ſhe alleges is a thing ſo entirely againſt nature, and out of the reach of ordinary obſervation, that it is not impoſſible much might depend, if the caſe reſted here, upon the opinions of enlightened phyſicians upon the nature and tendency of the particular facts here alleged. But the ſcience of medicine is now in a very different ſtate from what it was ſome centuries ago. And the petitioners do humbly aver, that if the caſe be ſtated to medical profeſſors of eminence, even upon all the facts as they are alleged or ſuppoſed to be proved by Miſs Cumming, they will tell your Lordſhips, that, for *obvious medical reaſons*, they have not the leaſt tendency to venereal gratification, and afford no evidence whatever that there was any ſuch intention. The petitioners apprehend, that this well deſerves conſideration. The caſe has no reſemblance to that of the intercourſe of a man with a woman, where common experience affords a guide for eſtimating the effect of evidence. And even the unnatural abuſe of a man with a man may be judged of by circumſtances of an obvious and eaſily intelligible nature. But this caſe is totally different. Some of your Lordſhips even doubt, if ſuch an intercourſe has or can have any exiſtence. But as to the circumſtances which indicate it, if it does exiſt, the Bench and the Bar are all alike in the dark. And in this ſituation, the petitioners will only aſk how your Lordſhips would look upon the caſe, if a number of medical Profeſſors of this place ſhould declare upon their oaths, that the facts here relied upon are of a nature totally inconſiſtent with the object attributed to them, and have not the ſlighteſt tendency to prove that object?

But, as the general charge brought by the defender is in itſelf a monſtrous improbability, which, at leaſt, ought to be inſtructed by the moſt *unequivocal* facts; ſo, it is ſubmitted, that the manner in which it is attempted to be qualified in this caſe leads to no certain concluſion. Every thing will be preſumed againſt it; every ſuppoſition will be taken rather than that of ſuch extravagant guilt. If the facts, though believed, can be accounted for otherwiſe, or ſuppoſed to have taken place without guilt, your Lordſhips will not conclude the parties to be criminal. And, in regard to the particular facts ſtated, in ſo far as they have any bearing to ſupport the general charge, if the ſtatements of the accuſer and the proof adduced are not quite unexceptionable and conſiſtent, your Lordſhips cannot believe them.

Upon the very firſt ſtatement, then, of the caſe, the petitioners have in their favour, not only the univerſal preſumption of in-

nocence, but preſumptions from the very nature of the charge, ſo ſtrong, as to render it in the higheſt degree incredible, if not abſolutely impoſſible.

But when your Lordſhips attend to the circumſtances of this charge, as applied to the petitioners individually, and particulariſed in the proof, it is humbly apprehended, that the exiſtence of ſuch a propenſity is beſet on every ſide by moral improbabilities, ſo utterly incompatible with it, that nothing but the moſt clear and conſiſtent demonſtration, by evidence above all exception or ſuſpicion, could overcome them.

And, however the defender might endeavour to depreciate and miſrepreſent the matter, the petitioners muſt begin with their previous characters during their whole lives. To withdraw the attention of your Lordſhips from the ſtrength and real importance of this part of the evidence, the defender in words admitted the good characters of the petitioners, and affected to have no deſire to injure them; at the ſame time that an attempt was made which the petitioners muſt conſider as unfair, to draw an argument againſt them, from a particular trait in the character of Miſs Pirie.

But the matter cannot be permitted to paſs upon ſuch admiſſions; and though in this, as in other points, the language muſt be taken as that of their counſel, rather than their own, this is one of thoſe rare occaſions, in which innocence may be permitted to aſſert before the world, with all humility, that which is its own praiſe. It is no ordinary proof of character that is before your Lordſhips; and when the nature of it is fairly attended to, the manner in which it was attempted to be met, will be ſeen to be mere evaſion and declamation. In the firſt place, your Lordſhips will be pleaſed to obſerve that there are here *two* parties accuſed of a crime ſo infamous, that it never was before heard of in the country. It might happen that one perſon originally of good principles, might be corrupted by another of a depraved mind and profligate habits. But, in the preſent inſtance, your Lordſhips have the preciſe hiſtory of both theſe parties. And, with great ſubmiſſion, there are very few perſons in any rank of life, who could exhibit ſuch deciſive proofs of principles of the pureſt and higheſt order, and of conduct, not only uniformly correct, and uniformly correct in the very point of female honour, but ſuch as to create the greateſt intereſt in all thoſe to whom they were known.

And here, though the defender ſeems to think it of little moment, the petitioners muſt remind your Lordſhips, that this ſtrange event, with the likeneſs of which theſe lands were never before

ſtained,

ſtained, occurs in a Chriſtian and a Proteſtant age and nation. The petitioners have been accuſtomed to believe, that the faith of a true Chriſtian is ſomething more than a mere name, and that the virtues which ſpring from it have a reality and a univerſal influence upon the life and conduct. They cannot admit that the caſe is here the ſame as it would have been among the pollutions of the heathen world. But ſtill leſs can they admit, that, if your Lordſhips be ſatisfied generally of the good characters of the petitioners as real, and not hypocritical, Chriſtians; the influence of their principles and lives upon the preſent queſtion is to be overſet merely by telling, that they may be of good character in other reſpects, and yet have been guilty of this attrocious iniquity. The thing is impoſſible. Your Lordſhips muſt either believe that they are both the moſt hardened and abandoned hypocrites, or your minds muſt revolt from the imputation of ſuch a crime as this.

Now, if there is a fact proved in this caſe, it is that both the petitioners were from their infancy educated in the ſtricteſt principles; that throughout their lives they had maintained thoſe principles in their conduct; that they were univerſally eſteemed, not leſs on account of their correct and virtuous deportment, than for ſuch accompliſhments as they had been able to acquire.

With regard to Miſs Woods, there is both direct and the ſtrongeſt real evidence. Mr George Thomſon depones, that he has been acquainted with Miſs Woods ſince ſeveral years before her uncle's death. Depones, 'That from his intimacy with Mr Woods, he 'frequently called there, and occaſionally ſpent the evening with 'them: That he had thereby opportunities of converſing with Miſs 'Woods at table, and thought her a remarkably modeſt, well-'behaved young woman: That he knows Mr Woods paid parti-'cular attention to her education, and ſuperintended it himſelf; 'and, in particular, ſpent many hours a-day with her, in reading 'with her, and pointing out the beauties of the Engliſh language, 'ſo as to qualify her for earning her own bread as a teacher or 'governeſs: That the witneſs has had leſs frequent intercourſe 'with her ſince her uncle's death, but has had no reaſon to alter 'the opinion he had formed of her. Depones, That ſhe never 'was an actreſs, nor upon the ſtage, (as the deponent is certain,) 'except once, when, by way of attraction to her uncle's friends, 'ſhe appeared at his benefit and danced, he thinks with another 'young lady; and he ſuppoſes Miſs Woods might be then about 'twelve or thirteen years of age.' He ſwears that Miſs Woods did

State, p. 122. A, B, C.

did not associate with the players; 'and he knows that it was his '(Mr Woods's) earneſt deſire that Miſs Woods ſhould be educated
State, p. 122. G. 'in the moſt virtuous principles.' Mrs Woods ſwears, that 'ſhe 'remembers her huſband taking his niece Miſs Woods to live with 'them, and ſhe was then about ſeven and a half years old. De- 'pones, That Mr Woods and ſhe endeavoured to give her as good 'an education as was in their power, and to inſtil into her *the beſt* '*principles*, with a view to Miſs Woods earning her own bread by 'her accompliſhments and good character; and that ſhe *ever found* '*her a well diſpoſed and well principled girl.* Depones, That at firſt ſhe aſſiſted Mr Woods in teaching; but when ſhe became of 'age, Mr Woods thinking her perfectly qualified, made her inde- 'pendent of him, and ſhe then began to teach on her own ac- 'count.' Then alluding to her attachment for Miſs Pirie, Mr Woods ſays, that 'from *her own reliance on her niece's virtue and* '*diſcernment*, ſhe would not have aſſociated with her unleſs her 'principles and morals had been unexceptionable.' She ſwears that Miſs Woods never was on the ſtage, except once when a child of ten or eleven years, when ſhe merely danced a minuet, and that ſhe was not permitted to frequent the Theatre. And in regard to both the petitioners, Mrs Woods, 'Interrogated, If in 'point of morality and principles ſhe conſidered them both ſafe 'perſons to be entruſted with the education of young ladies? de- 'pones, That *ſhe had the higheſt confidence in both of them, in every* '*reſpect.*'

In addition to this direct evidence in regard to Miſs Woods, the petitioners beg leave to refer to the correſpondence between her and her ſiſter and brother-in-law, which contains real evidence of her character, principles and feelings, much better than any direct evidence. *It ſhews the eſteem and affection in which ſhe was held.* It is extremely important in another reſpect: But it is
State, p. 142, to 149. hoped your Lordſhips will read the letters as alſo ſtrongly applicable to the character of Miſs Woods. Beſides this, there is the letter of Miſs Erſkine, in which ſhe ſays, 'I ſhall ever be happy to 'give my teſtimony to the great juſtice you did my niece, when 'you were ſo ſituated as to be able to devote your whole time and 'attention to her; and cannot help regretting, that a perſon who 'appeared to me *ſo eminently qualified for the education and im-* '*provement of youth*, ſhould be forced to relinquiſh a plan, which 'for ſome time promiſed ſo fair.' And the whole letter ſhews the ſtrong intereſt which Miſs Erſkine felt in the ſituation of Miſs Woods.

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The evidence as to Miſs Woods's character might very eaſily have been greatly extended.

With regard to Miſs Pirie, the evidence was equally eaſy. Your Lordſhips have firſt the certificates of all the ladies in whoſe families ſhe had reſided as a governeſs during ſeveral years previous to the commencement of the ſchool at Drumſheugh, every one of which ſpeaks in the very higheſt terms of her conduct, qualifications and principles. But the petitioners will only trouble your Lordſhips with the depoſition of Mrs Elizabeth Hamilton, the value of whoſe teſtimony is well known to your Lordſhips, and that of Mrs Campbell, with the particular explanations given in their letters. Mrs Hamilton ſays, that ſhe had been acquainted with Miſs Pirie for ſix years; and depones, 'That ſhe underſtands 'Miſs Pirie has been in different ſituations, having the charge of 'young ladies; and particularly ſhe was ſix months in the houſe 'with the witneſs, when Miſs Pirie had the charge of Lord Lu'can's daughters; ſince which time the witneſs, as Miſs Pirie has 'lived little in Edinburgh, has ſeen little of her. Depones, That 'it appeared to the witneſs, that Miſs Pirie was *a very conſcien'tious, well-principled young woman*, rather irritable in her temper, 'but *very ardent in the diſcharge of her duty*, at that time not of 'the moſt poliſhed manners, but OF GREAT PROPRIETY OF MORAL 'CONDUCT; and what the witneſs thought *her particular qualifica'tion, was her uncommon zeal to perform her duty to her pupils.*' Mrs Hamilton thought it neceſſary to explain by a letter, that ſhe was apprehenſive that the word *irritable* uſed in her depoſition might convey an idea different from what ſhe meant. And as that explanation, however attempted to be perverted, ſeems to be of real conſequence in the material part of this cauſe, the petitioners beg leave to inſert it. 'If permitted to explain myſelf more fully, 'I ſhould ſay that the irritability to which I alluded did not ſhew 'itſelf in being eaſily provoked to anger, or in impatience of 'contradiction or controul, but was diſplayed in a highly-excited 'ſtate of feelings, where any thing occurred to call forth her '*cenſure, diſlike* or *diſapprobation* on ſuch occaſions, (though only 'with regard to the faults incident to childhood,) *her imagination 'exaggerated the circumſtance into a cauſe of real vexation, ſo as to 'agitate the whole frame of her mind.* This gave her the appear'ance of ſeverity; yet in her conduct to her pupils, ſhe was not 'ſevere, at leaſt not ſo much ſo as to prevent her from conciliating their affection.' The petitioners will have occaſion to advert to this character hereafter, and it is truly important, as explanatory

State. p. 120. A, B.

— p. 132, 133.

natory of the trivial circumſtances on which this dreadful libel has been raiſed.

But in the mean time the petitioners beg the attention of your Lordſhips next to the character given by Mrs General Campbell. After Mrs Campbell had been examined, ſhe ſent a letter, in which ſhe ſtated, that from a degree of timidity natural to her all her life, ſhe was apprehenſive that ſhe had not done juſtice to Miſs Pirie; and ſhe there mentions, that ſhe herſelf had had the charge of young people for twenty years. She accompanies the letter with a certificate, containing her real opinion. 'I hereby de-
State, p. 134. A, B. 'clare, that during the *two years* Miſs Pirie lived *in my family* as 'governeſs, I obſerved her conduct moſt attentively. As the 'girls under her care were at the age of thirteen and fifteen, I 'was very anxious *that her morals ſhould be ſtrict.* I can declare, 'that I always conſidered her *a ſtrictly religious, ſincere, good 'Chriſtian, and the moſt indefatigable teacher I ever met with.* I felt '*poſitively convinced* that they were ſafe in her hands *from all evil 'whatever*, and that they were made to attend to their education. 'The improvement they made during the time they were with 'her, was viſible to every perſon intereſted in them, *and the im-'preſſion ſhe gave them of a future ſtate, I hope will remain with 'them through life.*' She ſays, that from natural temper, Miſs Pirie had great warmth of feeling, and then ſpeaks of her friendſhip for Miſs Woods, in the terms to be preſently quoted. And ſhe further ſays, 'Before her misfortunes came, I had determined 'to place my youngeſt niece at her ſchool, and alſo a grand-'daughter of my late huſband's; both of theſe girls are at the 'age of ſixteen. I think I cannot give a ſtronger proof of *the high 'opinion* I had of her than that, and I ſhall take this opportunity 'to declare, that I have a high opinion of her *ſtill;* and great 'as the odium is that has been caſt on her, I would, without heſi-tation, place a child of my own under her charge.'

The petitioners need go no farther for the character of Miſs Pirie.

That two ſuch perſons, with ſimilar purſuits, ſhould form a friendſhip for one another of the ſtrongeſt and pureſt nature, was no more than might have been expected, as ſoon as their acquaintance began. But the petitioners pray the attention of your Lordſhips to the fact, which will admit of no queſtion, that that friendſhip was at once founded on the beſt principles, and *openly avowed* as of *the warmeſt nature*, to perſons of the moſt unqueſtioned reſpectability. It is proved by the teſtimony of Mrs Woods,

Woods, that ſoon after Miſs Woods had formed an acquaintance with Miſs Pirie, 'they appeared to form an attachment to each 'other.' Mrs General Campbell, after mentioning Miſs Pirie's natural warmth of feeling ſays, 'Her attachment to Miſs Woods ap- 'peared to me *to be enthusiastic.* I alſo endeavoured to correct 'that, but it would not do: *She thought a residence with Miss 'Woods was to make her a much wiser and a better woman, and told 'me so.*' Here is the great keenneſs of Miſs Pirie's friendſhip, avowed and ſtrenuouſly maintained, and the preciſe character of it, the main ſource of the value which ſhe put upon it, openly declared to a lady of undoubted character. And this, long before the parties had come to live together, and before it is even pretended that there could be any criminal intercourſe between them. It was not an attachment which Miſs Pirie ſtrove to conceal, as conſcious of criminality. Whatever was the ſtrength of it, it was *open, undisguised* and *pure.* Now, ſee how ſhe ſpeaks of it at a later period, after their attachment had been embittered by ſtrife, and her feelings conſequently excited, and *the whole frame of her mind agitated*, in exact conſiſtency with the character which ſhe had before held. On the 12th of October 1810, *at the very moment* when it is pretended that this abandoned iniquity was *at its height*, ſhe takes the opportunity of Miſs Woods' birth-day to make her a preſent. And what is the preſent? *A Bible!* accompanied with a note in theſe words: 'Accept, my beloved, of that book, which can 'give conſolation in every ſituation; and, deareſt earthly 'friend, never open it without thinking of her who would 'forego all friendſhips, but her God's, to poſſeſs yours.' When a theory is to be ſupported, there is no act, and there are no words, however pure and good, that will not be perverted to ſuit it. The defender's counſel ſaid, that this was the very language of *Heloise!* A worſe compariſon could not have been imagined; as if the paſſion of Heloiſe for Abelard was of that horrible character, which is now imputed to the friendſhip of the petitioners! With great ſubmiſſion, if the mind be not perverted by the contemplation of groſs ideas, and miſled by the purſuit of a favourite theory, both the act of preſenting the Bible, and the terms of the note accompanying it, will bear no character, but the kindneſs of a true and a warm-hearted friend, ſeizing the opportunity, in the midſt of their ſtrife, to expreſs, in the language of purity and goodneſs, and with the ſtrength peculiar to her character, the reality and permanency of her regard. And truly, conſidering that in any other light it would be nothing ſhort of the moſt *useless* and wanton blaſphemy, the defender muſt either

State, p. 123. B.

retract.

retract altogether her admiſſion of the good characters of the petitioners, or ſhe muſt yield to the irreſiſtible impreſſion of this note, as utterly incompatible with the conſciouſneſs of the guilt now imputed to them.

But, fortunately, the defender has not even a loop-hole to eſcape by, as to the *undisguised* purity of Miſs Pirie's friendſhip for Miſs Woods down to the very laſt. Your Lordſhips have the teſtimony of Miſs Stirling, that ſhe was once preſent when the petitioners were in the act of reconciliation after one of their quarrels, and that 'they appeared *to feel warmly towards each other.* And interState, p. 112. E, F. 'rogated, If at that time, or ſince, after all ſhe has heard, it ſtruck 'her that there was any thing more warm or improper in their 'manner than became any other two friends under ſuch circum-'ſtances? depones, *Not in the leaſt.*' But what cloſes this matter is the letter of Miſs Pirie herſelf to Mrs Hamilton, dated the 5th November 1810, in which ſhe communicates to Mrs Hamilton the ſettlement of her differences with Miſs Woods. It is written, your Lordſhips will obſerve, after *all* the occaſions of which either Miſs Cumming or Miſs Munro has ſpoken; and, if it carries no weight to the defender's mind, as *real* evidence againſt the truth of her theory, it is humbly thought ſhe is the only perſon who can read it without feeling ſuch an impreſſion. After mentioning the ſettlement, ſhe ſays, not to Miſs Woods, but to her own — p. 152, 153. G, H, I; 154. A. patroneſs and friend Mrs Hamilton, 'That point is ſettled, but I 'fear it has been obtained at the expence of my future repoſe. 'In the courſe of this buſineſs, circumſtances have ariſen to ſhake 'my faith in my friend's affections to me. *I always loved her as 'my own ſoul, and would willingly have laid down my exiſtence to in-'crease her comforts*, till my confidence in her ſincerity was ſo 'cruelly ſhaken. When I give way to doubts, *I feel miſerable be-'yond deſcription;* and circumſtances are daily occurring to prove 'that ſhe would ſacrifice me to her aunt's pride and comfort. 'Dear madam, how ſhould I act? *I can never conquer my affec-'tion, ſhould ſhe even declare herſelf my enemy. I have loved her for 'eight years with ſincere and ardent affection*, AND HAVE ACCUS-'TOMED MY MIND TO CONTEMPLATE HER AS THE MODEL OF 'EVERY VIRTUE. And, if I cannot regard her as SUPERIOR TO 'EVERY THING THAT IS UNWORTHY OF A GREAT AND EXALTED 'MIND, *I feel miſery muſt be my portion in this life.* YOU MUST 'AID ME WITH YOUR ADVICE, as you can enter into my feelings 'and perhaps adminiſter an opiate that can aſſuage *the heart-'rending ſorrow I frequently experience.* Pardon this incoherent

'production

'production. Permit me to ſee you when convenient. And be-
'lieve me your ever grateful,' &c.

Can the moſt determined ſceptic in the reality of virtue or religious principle, refuſe his aſſent to the force of this evidence? Here is a letter, preſerved by mere accident in the hands of a lady of the firſt character, written immediately after it is ſuppoſed this infamous connection had come to its height, but a few days before Miſs Cumming's diſcloſure, and while it was believed that the ſchool was to go on. And what does it contain? Is there any diſguiſe of the petitioner's attachment? Is there any of the coldneſs in ſpeaking of Miſs Woods, which a conſciouſneſs of guilt muſt have produced? Far otherwiſe. She would *lay down her life* for Miſs Woods: *She loves her as her own ſoul:* She can *never conquer her affection:* For *eight* years ſhe has loved her with ſincere *and ardent affection.* The language is even *ſtronger* and more glowing, than that which the defender ſo foully miſrepreſents in the note to Miſs Woods herſelf. But what is the foundation of this ſtrong friendſhip, and what the purpoſe of communicating with Mrs Hamilton? Miſs Pirie has accuſtomed her mind to contemplate Miſs Woods *as the model of every virtue,* and unleſs ſhe can regard her as *ſuperior to every thing that is unworthy of a great and exalted mind,* ſhe feels that miſery muſt be her portion in this life. Thus, declaring her attachment in the ſtrongeſt and fondeſt terms that language could ſupply, ſhe places her miſery in the doubts with which their diſputes had filled her mind concerning the ſuperior and exalted virtue of her friend. And why does ſhe addreſs Mrs Hamilton on the ſubject? '*You muſt aid me with your advice,*' &c. Can any thing more abhorrent to human reaſon be figured, than that the petitioner ſhould have come to conſult ſuch a perſon as Mrs Hamilton, how ſhe ſhould act in regard to a friendſhip ſo avowed, if it had been founded in, or attended with, the abominable atrocities which the libel here ſuppoſes? Where was the neceſſity of writing this to Mrs Hamilton? Where the motive for uſing ſuch language? Where the poſſibility of accounting for it, if it be not taken as the genuine language of nature, the language dictated by ſtrong feelings, but influenced by principles of the pureſt character? But put together Miſs Pirie's language to Mrs Campbell before ſhe lived with Miſs Woods at all,—the nature and language of her note to Miſs Woods,—her earneſtneſs in her reconciliations,—and the whole nature and terms of this letter to Mrs Hamilton; and, it is humbly ſubmitted, that a greater moral improbability in

human character and conduct never was exhibited, than to ſuppoſe that there was in her mind the leaſt taint of that black and diſguſting iniquity which is the ſubject of this cauſe.

Conſidering the whole character of this friendſhip, the petitioners may juſtly apply to it the words of Cicero: 'Eſt autem 'amicitia, nihil aliud niſi omnium divinarum humanarumque 'rerum, cum benevolentia et caritate ſumma, conſenſio: quæ 'quidem haud ſcio, an, excepta ſapientia, quicquam melius ho-'mini ſit a diis immortalibus datum. Divitias alii præponunt, 'bonam alii valetudinem, alii potentiam, alii honores, multi etiam 'voluptates. Belluarum hoc quidem extremum eſt; illa autem 'ſuperiora, caduca, et incerta, poſita non tam in noſtris conciliis 'quam in fortunæ temeritate. Qui autem in virtute ſummum 'bonum ponant, præclari illi quidem: *Sed hæc ipſa virtus amici-'tiam et gignit et continet; nec, ſine virtute, amicitia eſſe ullo pacto 'poteſt.*'

Such being the moral and religious characters of the petitioners, and ſuch the nature of their friendſhip, the moral improbability of their being guilty of ſuch groſſneſs as this is too plain to be totally evaded. And how was it met by the defender? By an evident miſſtatement of the argument drawn from it. There was a declamation, certainly conducted with much eloquence, concerning a clergyman of this place, and another perſon connected with the Univerſity of Oxford; and afterwards it was ſaid, that to prove integrity in general does not deſtroy the probability of a man being licentious or amorous, &c. But all this is mere evaſion. It is well known that the clergyman alluded to, and others of his family, were mad; and, inſtead of being remarkably pious, it is well known, that the moſt remarkable feature in his character was, that his principles and opinions were totally inconſiſtent with the profeſſion he had adopted. But, without diſputing that perſons of accompliſhments have fallen into ſodomitical practices, generally led by ſome taint of inſanity, the petitioners found upon their uniform good conduct, upon the correctneſs and high character of the principles by which their conduct had been clearly regulated,—upon the perfect ſoundneſs of their minds at this inſtant, upon the openneſs of their friendſhip,—and upon the eagerneſs, which they had through life diſplayed to maintain their own honour, and do their duty in ſociety. Is it no violent improbability, that no leſs than *two* ſuch perſons ſhould at laſt have been guilty of a crime ſo utterly abandoned, that it is totally unknown, and even doubtful if it can exiſt?

But

But remember, in the next place, that at the time when this ſtrange propenſity is ſaid to have taken its origin, and come to its height, the petitioners were in the conſtant exerciſe of moſt laborious duties. Look at the ſtatement of the buſineſs of a day in this ſchool, as it was given in the Anſwers to the Condeſcendence, and proved by Miſs Munro and all the other witneſſes. It exhibits a continued courſe of induſtry, to which few perſons in any ſtation are ſubjected. Not an hour, nor half an hour, in the day, in which one or other of the petitioners, and generally both, were not in the act of inſtructing or ſuperintending their pupils. It was not a ſchool, where diſorder, licentiouſneſs, idleneſs, or diſſipation prevailed. Amidſt all their perſonal diſputes, it was the ſcene of the utmoſt order, decorum, and induſtry. Was that a ſituation, or were theſe habits, calculated to engender unlawful or unnatural paſſions? Or if ſuch paſſions had ariſen, in ſpite of them, is it conceivable, that the zeal and active induſtry of the petitioners could have ſubſiſted in uniſon with ſuch a diſguſting conſciouſneſs? The whole virtue and energy of the petitioners' minds muſt have been deſtroyed by ſuch contamination. Inſtead of thinking of the welfare of their pupils, and ſubmitting patiently to the irkſome labour of a ſchool, they would have ſhrunk into indolence with the ſtings of their own conſciences, or occupied their thoughts in contriving ſchemes of more free indulgence.

Look next to the intereſt of the petitioners, and their proſpects. They had embarked their all in this ſchool. Their characters ſtood high. Their eſtabliſhment was attended with ſignal ſucceſs; and they were doing their utmoſt to juſtify the good opinion formed of them. They had too much ſenſe not to know, that the ſlighteſt ſurmiſe of any defect in their moral character or conduct would be ruinous to all their proſpects.

But yet obſerve, that if there be one word of truth in the imputation of this nefarious propenſity, it *all at once* came to be indulged in a manner, and with a degree of impudent daring, which nothing but abſolute frenzy could account for. Miſs Cumming had ſlept in the ſame bed with Miſs Pirie from December till July, and, during the greater part of that time, another young lady had ſlept in the ſame bed with Miſs Woods. During all that time it is not pretended that any ſuch thing took place. Miſs Cumming pretends, that in the holidays ſhe heard the noiſe, to deſcribe which ſhe ſtrained her invention to ſuch a pitch; while the petitioners ſlept together in one bed and ſhe ſlept in another in the ſame room. Your Lordſhips gave little credit to this, or reſted nothing

thing upon it. But, even at this time, Where was the neceſſity for Miſs Cumming being in the ſame room at all? Moſt of the young ladies being with their friends, there was abundance of room; and, if the petitioners had had any ſuch unlawful practices in their minds, it was the eaſieſt thing in the world for them to arrange the family according to their own convenience. But what happened afterwards at the material point of time? Miſs Pirie reſumed her ſituation in *one* room, with *Miss Cumming* for her bedfellow, with Miſs Stirling ſleeping by herſelf within two feet of the bed—and two other young ladies in the ſame room. Miſs Wood again ſlept in *the other* room, and choſe Miſs Munro for her bedfellow, Miſs Cunninghame and Miſs Hunter oppoſite, and two Miſs Edgars in a third bed. Thus, 1. *Without neceſſity* the petitioners ſlept in *ſeparate* rooms; 2. *Without neceſſity* they ſlept in ſeparate beds; 3. *Without neceſſity* they choſe *the* TWO ELDEST *girls in the ſchool* for their bedfellows; 4. Without neceſſity Miſs Pirie choſe the bed immediately by the ſide of Miſs Stirling's bed —another lady of ſixteen,—when ſhe might as eaſily have ſlept in the other corner of the room, or placed Miſs Stirling there; and *laſtly*, In each of theſe rooms, of very ſmall dimenſions, the petitioners were at all times beſet by *five* or *ſix* perſons, with one or other of the two *eldeſt* actually in the bed.

It is totally impoſſible, by any ſophiſtry, to eſcape from the certainty that the petitioners, having the command of their own houſe, might, with the greateſt eaſe, have avoided one and all of theſe inconveniencies. They might even have had their beds in the dreſſing-room. At all events, they might have ſlept *together*, which could have been attended with no objection, as all the rooms entered through one another. And, at all hazards, they were under no neceſſity of ſelecting the two eldeſt ſcholars to ſleep with them. And yet the theory is, that, having the criminal propenſity here ſpoken of, they deliberately made an arrangement of their houſe, in a way which rendered detection an abſolute certainty; and then, like perſons completely bereft of reaſon, went from the one room into the other, and into the very beds where ladies of *ſixteen* were ſleeping, and there perpetrated their abominable acts. With ſubmiſſion, nothing in the hiſtory of abſurdity or mental derangement ever exceeded this. And yet your Lordſhips are called on to believe, that women of ſuch education, principles, habits, characters, and obvious intereſts, and confeſſedly in their ſound ſenſes, wilfully, unneceſſarily, and all at once, thus ruſhed into the very gulf of ruin. They are made all at once to

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exceed in impudent profligacy the moſt abandoned wretch that ever was found in the aſſociations of Warrington or Vere Street. And yet, after all, your Lordſhips are gravely told, that there is no violent improbability in the ſuppoſition!

It was obſerved, indeed, that there was no ſtronger improbability in theſe circumſtances, than occurs in many inſtances of gratifying the natural paſſion; that they were only in all ſeven times in one another's beds, and that there was a total ceſſation when they had reaſon to think they were ſuſpected. But, with great ſubmiſſion, it is believed, no example can be pointed out either of a natural or an unnatural paſſion in the leaſt degree parallel. The petitioners *had the command of the houſe*, and of all the beds; and yet, *uſeleſsly and unneceſſarily*, with their whole characters and exiſtence at ſtake, they made an arrangement which of neceſſity was to lead to detection; and they increaſed the chances of detection by every circumſtance that ingenuity could have deviſed. They were not inured to profligacy, nor by practice grown bold in iniquity. Was it ever heard of, that any man or woman, in ſuch circumſtances, having the whole in their own power, and without any taint of inſanity, threw off at once even the colour of modeſty, and abandoned all the chances of ſafety in their power? With great ſubmiſſion, it is contrary to the principles of human conduct; it is repugnant to the rules of evidence, which muſt be guided by thoſe principles, and muſt bring conviction to the mind of a Judge, according to the obvious motives by which mens actions are influenced. The times are not confined to *ſeven*, or to *any* number; for Miſs Cumming expreſsly ſays they were much more frequent than ſhe will condeſcend upon. And with regard to the idea that there was a total ceſſation when the petitioners had reaſon to think they were ſuſpected, the obſervation derives all its weight from the previous aſſumption of the nature and purpoſe of their interviews; for it will preſently be ſhewn, that at or about the ſame time the diſputes between the petitioners were brought to an arrangement; the bone of contention was in ſome meaſure removed; and conſequently it is not marvellous, that there ſhould not afterwards have been ſimilar interviews to thoſe which the petitioners have always admitted to have taken place.

But the moral improbabilities do not even reſt here. They are ſtill farther accumulated.

There is the very cleareſt evidence, that at the very time when the material interviews ſworn to by both Miſs Cumming and Miſs Munro are ſaid to have taken place, the quarrels between the petitioners were at their height. There can be no doubt of the fact of

theſe quarrels, or of their having a real ſource. But the preciſe date of them is of real importance. Miſs Cumming would not recollect ſo as accurately to diſtinguiſh between the different occaſions when ſhe ſaid Miſs Woods came into the bed of Miſs Pirie. But ſhe fixed poſitively the *laſt* time to be about *two months after the*
State, p. 80. H. *ſummer holidays;* and that is the time when ſhe ſays ſhe firſt came to be ſure there was ſomething indecent or criminal. This brings it to about the 20th of September; and ſhe ſays, that ſhe began to ſuſpect it about *a month* after the holidays, and a little before Miſs Munro came to the ſchool, that is, about the middle or end of Auguſt. Miſs Munro, again, places her firſt occaſion in the end of September; and her ſecond occaſion is fixed, by her converſation with Mary Brown, to have been between Saturday, the 6th of October, and Saturday the 13th of October.

Now, attend to the ſtate of the quarrels. Mrs Woods ſwears, that theſe diſputes *began* ‘ about *ſix months* before the ſchool ‘ broke up,’ and that ſhe thinks they increaſed, ‘ particularly *du-* ‘ *ring the laſt three months* that the ſchool continued. Depones, ‘ That down to *the latter end of Auguſt* laſt, the witneſs always ‘ took her meals in the ſchool-room with the family;’ but that about that time there was a violent quarrel, in conſequence of which ſhe remained in her own room ever after, and her meals were ſent to her there. ‘ And Miſs Woods told her, that ſhe her- ‘ ſelf would never again go to the ſchool-room but for the pur- ‘ poſe of teaching; *and after this quarrel in the month of Auguſt,* ‘ *Miss Woods constantly supped with the witness in her room.*’ Thus, the firſt of Miſs Cumming’s five occaſions was ſome time in the month of Auguſt, and her laſt was at or before the 20th of September. The quarrels had begun even before the holidays; they were increaſing during the laſt three months previous to November; and particularly *in the end of Auguſt*, the quarrel took place in conſequence of which Miſs Woods went to ſup in her aunt’s room.

Now, *on the 9th September*, your Lordſhips have Miſs Woods’ letter to her ſiſter, in which ſhe very plainly intimates the diffe-
—— p. 143. A, rences between her and Miſs Pirie, and the probability of their
B, C. entirely ſeparating. Then, *on the 24th September*, there is another letter by Miſs Woods, in which the nature of the quarrels is diſtinctly explained, and the determination of Mrs Woods to leave the houſe, is alſo mentioned. This, your Lordſhips will obſerve, is a little after the time which Miſs Cumming has been pleaſed to fix as the date of her laſt occaſion, and it is *juſt about* the very time which Miſs Munro has fixed for her firſt occaſion. Your

Lordſhips

Lordſhips are requeſted to read that letter, and the anſwer to it by Mrs Tindal, on the 3d October; and after reading them, your Lordſhips will judge how far there is any conſiſtency or credibility, in the idea of Miſs Woods being at that very time, and almoſt on *that very day*, in a criminal intercourſe with Miſs Pirie. With humble deference, it appears to be next to an impoſſibility to conceive it. State, p. 142, 143, 144, 145.

In confirmation of the reality of this, look at Mrs Hamilton's depoſition, from which it appears, that Miſs Pirie was in the habit of conſulting her when ſhe was in difficulty. She conſulted her, moſt remarkably, almoſt immediately after Miſs Munro came to the ſchool, on a ſubject which demonſtrates the integrity of her mind. With her natural zeal, with her natural anxiety about the religious principles of her pupils, ſhe was unhappy, becauſe it appeared that Miſs Munro had taken the ſacrament, without, in her opinion, having ſufficient knowledge of the ſubject. To obtain advice on this ſubject, ſhe was at the pains to ſolicit a private converſation with Mrs Hamilton, which, but for this cauſe, would never have been heard of; and the fact carries real evidence of the purity of her mind and the ſincerity of her religion, far too direct and powerful, to be overcome, by compariſons with ſuch men as Greenfield, or by any evaſive admiſſion of general character. But it alſo appears, that ſhe conſulted Mrs Hamilton particularly, concerning her quarrels with Miſs Woods. Mrs Hamilton is not ſure of the preciſe time, except that it was ſome time previous to the 5th of November, the date of Miſs Pirie's letter to her: And ſhe ſwears, that Miſs Pirie came to her 'in very 'great agitation, ſaying, that ſuch diſagreeable things had hap-'pened that ſhe was much afraid the eſtabliſhment at Drumſheugh 'muſt be broke up, however advantageous and ſeemingly proſpe-'rous: That ſhe conſidered that Mrs Woods uſed her extremely 'ill,' &c.—'and that Miſs Woods adhered ſo much to her aunt, 'that ſhe was much afraid it muſt come to a rupture at laſt.' It is pretty clear, that this muſt have been conſiderably previous to the 5th of November, becauſe before that the whole matter had been arranged.

Now, your Lordſhips will be pleaſed to conſider, that at leaſt from the month of Auguſt till the middle or end of October, the petitioners were in the ſtate of conſtant irritation in regard to one another, which had the effect of producing thoſe virulent letters which paſſed between themſelves in the month of October, and in which Miſs Pirie deſcribed the houſe as 'this abode of miſery.'

But

But it is preciſely within the months of Auguſt, September and October, that *all* the ſcenes are laid by Miſs Cumming and Miſs Munro. So that the time choſen for ſatisfying this frantic paſſion, is a time when the petitioners were at war with one another, and when it was but occaſionally that they had even the ordinary intercourſe of friends. At preſent, the petitioners ſay nothing of the manner in which this produced the circumſtances on which the whole ſtory is founded. But if your Lordſhips can read the evidence of the temper of mind, and the ſtate of feeling, in which the petitioners were in regard to one another, without ſeeing the groſſeſt improbability in the truth of the ſtory, the petitioners can only ſay, that they have conceived their caſe unfortunately, but that the laſt thing they ever thought of was, that their *quarrels* were to end in a charge of extravagant and *unnatural affection.*

But, in the reſult of theſe quarrels, there is proved beyond controverſy, an abſolute anomaly in the hiſtory of unnatural paſſion. No fact can be more clearly proved, than that the parties had *determined entirely to separate.* In the letters which paſſed between them in October, the propoſal is diſtinctly made by Miſs Woods, and as diſtinctly acceded to by Miſs Pirie. And there is not a doubt that it was their full intention to ſeparate at Whitſunday. They would have ſeparated at Martinmas, if it had not been for the engagements they had come under, and the neceſſity which obliged them to conceal, as far as poſſible, the extent of the rupture between them. On this point, look at the letters of Miſs Woods to her ſiſter, and the letter of Miſs Pirie's ſiſter to herſelf, which is dated 31ſt October 1810. Nothing can ſhew more certainly than theſe letters, that the petitioners, with all their previous regard for one another, were deſirous of nothing ſo much as a total ſeparation, although each was naturally anxious to juſtify herſelf, and to effect it with credit and dignity. But remembering that the paſſion attributed to the petitioners, was, if it exiſted, entirely peculiar to them, it may be aſked, if it ever was heard of, that parties in the immediate practice of ſuch an unnatural luſt, ſhould eagerly form the reſolution of ſeparating, and at laſt ſettle it by a regular agreement? According to human nature, if there had been ſuch a paſſion, it would have controuled and domineered over every other intereſt, or feeling, or paſſion. They would have ſacrificed every thing rather than reſolve to abandon it. But yet the fact is altogether unqueſtionable, that as they were actually in quarrels about their ſeparate rights, and objects of ambition, during

State, p. 140. A, B.

ring the whole time that the ſuppoſed ſcenes laſted, ſo the reſult of thoſe quarrels was an arrangement which ſettled the diſputes for the preſent, but carried in it the reſolution of ſpeedy ſeparation.

The petitioners now beg leave, in a few words, to draw together theſe points of real evidence againſt the truth of the charge. The ſtory itſelf is the moſt unnatural and improbable, that ever was broached in any court, civil or criminal. The perſons who are accuſed of it are two perſons ſeparately educated, in the ſtricteſt principles of religion and morality,—who have been all their lives laboriouſly engaged in the education of young women,—who have uniformly diſtinguiſhed themſelves by their correctneſs of principle and conduct,—by their zeal in the diſcharge of their duty, and by the pains and the ſucceſs with which they have cultivated and taught to their pupils the obligations of Chriſtianity, and all the moral feelings of female honour and delicacy;—and who, at this moment, muſt be admitted to be perſons of ſound ſenſe, and of conſiderable accompliſhments. It is founded upon circumſtances originating in a friendſhip which is proved inconteſtibly to have been of the moſt open and undiſguiſed nature. The ſcene of it is placed in circumſtances affording chances of detection amounting to certainty, while it was in the power of the parties. with the utmoſt eaſe, to exclude thoſe chances. The time of it is placed in a period when the parties were in continual ſtrife and variance with one another. At that very time, it appears they had determined totally to ſeparate, abandoning an eſtabliſhment in which they had embarked th- whole ſavings of laborious lives. At laſt the diſputes are ſo far adjuſted, and then Miſs Pirie, on the 5th November, pours out all her feelings on the ſubject to Mrs Hamilton. On the 14th of November, the ſchool is ruined by Miſs Cumming. The petitioners, in real and unfeigned ignorance of the cauſe, conduct themſelves from firſt to laſt as perſons conſcious of their innocence would have conducted themſelves. They bring their action before your Lordſhips for redreſs. They bring it, diſdaining the advantages which the law permitted them. They defied the defender to a proof, firmly convinced that no malice could overcome the truth of the caſe; and even when their counſel thought it their duty to object to the teſtimony of Miſs Cumming, it will be well recollected, that they after all ſtated that they *referred themſelves abſolutely to the equity and diſcretion of the Court.*

Now, when all theſe things are put together, it is humbly ſubmitted, that they come as near as poſſible to a demonſtration of the negative. There is not one of the facts that admits of the

ſmalleſt queſtion. Your Lordſhips *muſt* believe them; and the defender is forced to admit every one of them. It is, therefore, not merely a moral improbability, ariſing from one circumſtance or two, that is here pleaded. It is *a combination of facts making real evidence againſt* the truth of the ſtory; and ſhewing, that according to common rules of eſtimating human conduct, the charge is altogether incredible, if it were ſworn to with ever ſo much obſtinacy or preciſion. It is better evidence than evidence of an *alibi*. If there were here direct evidence of an *alibi*, your Lordſhips would have to eſtimate the credit of two ſets of witneſſes. But here there can be no eſtimate of the kind. The facts at preſent founded upon are all *indiſputable*, and the real evidence ariſing from them is not indeed proof of an *alibi*, but proof of the total *alibi* of the mind, proof of the impoſſibility of the petitioners having harboured ſuch an intention; proof, carrying perfect conviction, that if the petitioners had indeed been guilty of ſuch a thing, it would be outrageous to all common grounds of judgment, and againſt thoſe principles of evidence, by which, in other matters, men reſolve their belief. In ſhort, when this real evidence is put all together, it leads to a perfect certainty, that the accuſation muſt originate in miſtake, or in malice, or in prejudice; and directs your Lordſhips to the moſt anxious inquiry into the ſituation, characters, underſtandings, and prejudices of the witneſſes, and into the nature and conſiſtency of the teſtimonies by which it is attempted to be ſuſtained; while it requires the moſt liberal and careful attention to any facts proved, by which the circumſtances admitted may be reconciled with innocence.

The defender found it totally impoſſible to deny in words, the great weight of theſe circumſtances, againſt the probability of the charge. But while ſhe treated each as if it ſtood by itſelf, and evaded entirely the view of the combination, as creating, not a mere improbability of any ſort, but the real evidence of circumſtances againſt the truth of the charge, ſhe found it neceſſary to have recourſe to a counter argument of probabilities. It was gravely pleaded, that becauſe this crime was ſo totally new, and in itſelf ſo improbable, therefore it was the more readily to be believed; becauſe it was more probable that the petitioners ſhould be guilty of it than that any young girl ſhould invent it.

This was juſtly ſtated to be one of the groſſeſt paradoxes that ever was attempted to be paſſed as ſound reaſoning. It exceeds in ſophiſtry any of the inventions of the ancient ſophiſts, or the groſſeſt enigmas of the ſchools. In plain Engliſh, it is juſt *a contradiction*

tradiction in terms. The crime is in itſelf totally improbable; from which the natural inference is, almoſt by tranſlation, that it is *not* eaſily to be proved or believed; and the common ſenſe and *ſettled rule of law* is, that the more atrocious, and ſtill more the more extravagant and unnatural, an accuſation is, the proof of it muſt be ſo much the more clear and certain: But the defender draws juſt the oppoſite inference. According to the petitioners, the ſtory is utterly improbable, if not impoſſible. The defender, in other parts of her argument ſays, that it is no ſuch thing; that it is quite well known, well underſtood, and actually practiſed among women in all countries. If ſhe had proved this, it might affect the inference of the petitioners, from the nature of the offence. But not having proved it, how does ſhe proceed? She *aſſumes juſt the contrary of her own plea*, that it is not known,—that it is in the higheſt degree improbable,—that it is utterly incredible in a particular caſe. And having aſſumed this, ſhe concludes, that it is more probable that it ſhould be true, than that young girls ſhould have invented it. What is this but to ſay, that, *becauſe* it is *improbable* or next to *impoſſible*, *therefore* it is *probable*, when told by young girls? The petitioners humbly conceive, that young girls may tell falſehoods both from miſtake and deſign, and, that if they tell that which is *in itſelf incredible*, the incredibility ought not to ſtrengthen but to deſtroy their teſtimony.

But it is always aſked, How can it be ſuppoſed that they ſhould have invented ſuch a thing? It is believed there can be very little difficulty in accounting for the invention. But, in the firſt place, it is totally abſurd for the defender in this cauſe, to repreſent it as impoſſible or incredible, that facts of the ſame deſcription with the material parts of Miſs Cumming's depoſition may have been invented. For unluckily, there are in this cauſe not one example, but *many examples*, of *pure and unmixed invention* in the moſt material parts of the averment. And though there are ſeveral of them which will be more properly conſidered upon the details of the evidence, the petitioners beg leave to point out a few of the moſt conſpicuous.

1. When the cauſe was firſt heard before the Lord Ordinary, it was moſt pointedly averred by the defender's counſel, that the infamous conduct of the petitioners was ſo well known, that when they went out, *they were hooted at by the people at the Water of Leith.* It cannot be queſtioned that the aſſertion was made, and as little, that it was made on the authority of Miſs Cumming. Being

ing retracted, and both admitted and proved to be *an absolute falsehood*, it was neither more nor less than a deliberate *invention*.

2. It had been averred, in the most pointed terms, in *three* several hearings, and in the *written statement*, that the maid did actually see the petitioners *lying on the sofa* in the drawing-room, *by looking through the key-hole* of the door,—and this after having found *both* of the doors of the drawing-room locked. That this assertion is false, and totally disproved, is certain. But besides this, it was and is an absolute *impossibility*. It is therefore a matter *of pure invention*; and at present it matters nothing to the petitioners, whether it was invented by Charlotte or by Miss Cumming. Clear it is, that it *was in fact invented*, being a manifest falsehood. And it is another conspicuous example of the invention employed in this cause.

3. Miss Cumming has given a most brilliant example of her powers of invention, in the representation, at once and without hesitation, for the purpose of supporting her story in one particular, *of a noise*, which no other imagination ever figured, and which does not and cannot exist in nature. Of the effect of this, more hereafter. But clear it is, that it was an idea of the most lively and unmixed invention.

4. The petitioners will demonstrate, that Miss Cumming has invented *another* story absolutely false, and invented it for an evident purpose, and under circumstances so extremely peculiar, as to prove to every man's conviction, her determination that the ruin of the petitioners should not be prevented for lack of invention. The petitioners allude to the story about Charlotte seeing into the drawing-room *from the outer-stair,—a story never once heard of* till the story of the key-hole was refuted physically, nor till after your Lordships had visited the premises,—and in which she is flatly contradicted, not by Charlotte only, but by all her own previous statements, and also by *both* Miss *Munro* and Miss *Stirling*. That this was a mere invention, the petitioners think they can prove beyond doubt.

5. Your Lordships have manifold proofs of invention, in the struggles to save from direct impossibility the description of what passed upon Miss Cumming's main occasion. It would be absurd to dispute, that her imagination was put to the utmost stretch in that examination. One part or other of it *must* be invention; and when your Lordships recollect that she sometimes sat for *ten minutes together absolutely silent* upon *the plainest question*, and that without

without being in the leaſt degree embarraſſed by the *moſt* indelicate inquiries, where can the marvel be, that there has been invention in this cauſe?

In truth there is ſcarcely a line of Miſs Cumming's depoſition, in which it cannot be proved that there muſt have been either direct invention, or the ſtrongeſt poſſible embelliſhment. But at preſent the petitioners have ſurely ſtated enough to ſhew that there is nothing wonderful, nothing improbable, in the ſuppoſition that this ſcandalous imputation is mainly the fruit of invention. And the petitioners do, with great deference, ſtill truſt, that when the nature of the teſtimony of the principal witneſs; the total want of ſupport which it receives from any thing elſe; the numerous and direct contradictions in every part of the evidence, are conſidered; your Lordſhips will have no difficulty in coming to this concluſion.

It does not, however, appear to the petitioners to be a difficult matter to account for the invention which has been exerciſed in this caſe. And this leads them to enter more particularly into the conſideration of the ſtory as it has been detailed, and of the direct evidence by which it is endeavoured to be ſupported.

Miſs Jane Cumming was born in India of a woman of colour. She remained in India till ſhe was of the age of *eight* or *nine* years. During that time, ſhe aſſociated chiefly with natives. For it is proved that ſhe could not ſpeak a word of Engliſh, though ſhe had learned to read it a little. She was at two ſchools in India; and at leaſt one of them was kept by a native.

It is a well known fact, that the natives of thoſe climates come much earlier to maturity than people in colder latitudes. It is even common for girls to be married at ſeven or eight; and in theſe caſes a real cohabitation takes place. But at all events, females of the age of eight or nine have ideas quite unknown to the natives of this country at the ſame age. The tendencies of nature alone inſtruct them.

It is further a notorious fact, that the manners of the lower natives of India are of the moſt licentious nature. A young girl living among them muſt daily and hourly ſee objects, calculated to convey notions, which would not occur to a European, even equally advanced in temperament: And in converſing with them, ſhe muſt have theſe notions excited and confirmed in her mind. The petitioners ſtate this as a notorious fact. But they offered to your Lordſhips the moſt reſpectable evidence of the fact, of the

very great licentiouſneſs of the manners of the lower Indians, and particularly of the ſtate *of the ſchools* of every ſort at the very time when Miſs Cumming was living in India. The petitioners believe, that if the examination of Dr Hare had proceeded, it might not have been confined to a general ſtatement, but might have been ſo qualified as to bring the fact into a direct application to the preſent caſe: They believe that Dr Hare was probably acquainted with the particular ſchools in queſtion, and may have been able to give your Lordſhips light upon that ſubject. Your Lordſhips refuſed to examine him. But it will be recollected that you only refuſed it *in hoc ſtatu*, reſerving for conſideration whether the Court might not, *ex proprio motu*, examine him and other witneſſes to the ſame effect. And conſidering the difference of opinion in the Court, it is ſubmitted that there is ſtill room for ſuch an examination.

But the petitioners muſt beg leave to aſſume the general fact, both of the licentiouſneſs of the Indian manners, and of the badneſs of the ſchools. It is proved by the fact, that all Europeans who have children in India, are anxious to ſend them to England as early as poſſible, generally before they are four or five years old, for the expreſs purpoſe of avoiding the contamination ariſing from intercourſe with the natives. And the fact of Miſs Cumming's intercourſe, is proved by the language which alone ſhe uſed. It further appears, that even when ſhe came home, ſhe was attended by a black woman, who continued with her in this country for at leaſt ſix months.

The petitioners hope not to be miſunderſtood. They neither ſtate that the preciſe fact here alleged has any exiſtence in India, nor mean to ſay, that Miſs Cumming was rendered perſonally corrupt by the opportunities of obſervation to which ſhe was involuntarily expoſed. But they ſubmit the fact of the licentious manners and converſation to which ſhe muſt have been familiar, as extremely important in ſo ſingular a caſe, to account for a proneneſs and facility in the imagination, to pervert innocent or natural occurrences, that might be individually diſagreeable to her, into indications of licentious or libidinous propenſities. And, with great deference, it is quite impoſſible to maintain, that if ſhe was truly expoſed to theſe impreſſions while in India, the effect of them would be entirely loſt upon any child, and much more a half-caſt native, who did not leave it, at the very *earlieſt*, till the age of *eight*. To ſatisfy your Lordſhips ſtill farther of the reality of this ſuppoſition, the petitioners ſtated what they know to be a fact,

that

that the ſubject of this cauſe having been mentioned in a company of gentlemen in Edinburgh, who had lived in India, the moment it was mentioned that there was a lady of this deſcription in the ſchool, they were unanimous in ſaying that it muſt originate with her.

It appears, that after coming to this country, Miſs Cumming reſided for a conſiderable time with her grandmother, and afterwards went to a boarding-ſchool at Elgin, where ſhe remained two years. It is not neceſſary for the petitioners to inquire into her proficiency at that ſchool; but ſhe has herſelf ſtated, that the diſcipline of it was much leſs ſtrict than that obſerved at Drumſheugh; and that the ſcholars were allowed to go out by themſelves, without the miſtreſs or governeſs to ſuperintend them.

Miſs Cumming entered to the ſchool of the petitioners at the age of conſiderably paſt *fifteen*. It is hardly neceſſary for the petitioners to tell your Lordſhips, that young girls of that age, even natives of this country, if not under the very ſtricteſt and moſt private education, though they have no idea of the preciſe kind of offence here charged, know perfectly well that their private parts may be abuſed. They learn from nature imperfect ideas of the general nature of venereal enjoyment, and unleſs they be kept under very particular reſtraint, and prevented from any promiſcuous intercourſe with their own ſex, they cannot, however pure in their minds, eſcape the information that ſuch abuſes may take place.

That Miſs Cumming, at the age of ſixteen, had ſuch conceptions, might be eaſily preſumed by the extent of her intercourſe, though there were nothing more in it. But it is in vain to argue about this, ſince your Lordſhips have not only the real evidence ariſing out of the whole cauſe, but her own poſitive depoſition, that ſhe did form the idea of the libidinous intercourſe of the petitioners *entirely from her own knowledge and reflections*, without any aſſiſtance whatſoever. ‘ Interrogated, Did the *ſuſpicion* ariſe in ‘ her mind in conſequence of her own reflections, or in conſequence of any thing ſhe heard from any other perſon? depones, ‘ That it firſt aroſe in her mind, *from her own reflections, before ſhe had any converſation with any perſon on the ſubject.* Interrogated, Had ſhe any converſation with other perſons, *before ſhe became ſure* that the purſuers had been guilty of indecency together? depones, *She is ſure ſhe had not.* Interrogated, Whether ‘ *ſhe became ſure* that they had been guilty of indecency, *entirely from her own reflections and obſervations* on what paſſed between ‘ them? State, p. 81. C. D.

' them? depones, *Yes.*' It is in vain, therefore, to deny. that Miſs Cumming had a complete general notion of the nature of venereal intercourſe, and alſo of the poſſibility of theſe propenſities being abuſed. It is very true, that her notions on the ſubject were extremely imperfect, as all ſuch ideas muſt be where there is no actual experience. And accordingly, ſhe has conſtructed her ſtory in the moſt clumſy way poſſible, ſo as not to indicate any of the ordinary ſymptoms of venereal congreſs. But ſtill ſhe had the notion in her mind,—the complex notion of the intercourſe between a man and a woman, and of the poſſibility of the female inclinations being abuſed; and it is probable that her impreſſions on the ſubject were more lively than uſual, although it is not impoſſible that the ſource of them in her original education might not be minutely remembered. Accordingly, it appears clearly by her own account, if it were true, that ſhe formed ſuſpicions upon circumſtances which would have furniſhed no ground of ſuſpicion to any other perſon.

Now, Miſs Cumming having come to this ſchool, certainly poſſeſſed, however innocently, of ſuch ideas, it next appears, that the diſcipline obſerved by the petitioners was peculiarly ſtrict. This is proved by all the witneſſes. The ordinary buſineſs kept the ſcholars in conſtant employment; and by the continual preſence of one of the petitioners, they were under a much greater reſtraint in other reſpects than Miſs Cumming had been before accuſtomed to. It farther appears, that there was a ſet of puniſhments of different ſorts which were applied to particular offences: Taſks which required labour, and leſſened the hours of recreation: Diſgraces which, however trifling they may be repreſented, might have the effect of mortifying the pride of a perſon who had not been accuſtomed to ſuch controul. Now, it is certainly remarkable, that it appears clearly in the proof, that Miſs Cumming in particular was falling almoſt daily into theſe puniſhments; and Miſs Munro alſo was in the ſame ſtate very frequently. Independent of the direct evidence of this, there is real evidence of it in the memorandum-book kept by Miſs Cumming, and alſo in the letter of Miſs Pirie to Miſs Mary Cumming, which has been already quoted. And however theſe things may be attempted to be ſneered at as inſignificant, it is in the courſe of nature, that in particular diſpoſitions they might ſink as deep as any other affronts in older ſociety. But in this caſe it is a matter of evidence, that Miſs Cumming was extremely diſſatisfied with theſe puniſhments, and did feel ſome degree of reſentment on account of them. It

appears,

appears, if your Lordſhips give any credit to the judgment of the petitioners, that ſhe had behaved extremely ill to Miſs Cunninghame, on account of ſome little incident of that nature. And in her own book, there are things ſet down evidently indicating a certain degree of ſpite towards Miſs Pirie in particular, and perfectly ſufficient to prove her great deſire to get rid of the ſchool. It even appears, that when Miſs Cumming was giving her teſtimony, ſhe had a conſciouſneſs on this ſubject. For Miſs Pirie having had occaſion to reprove her on account of bad conduct to Miſs Cunninghame, had uſed the expreſſion, that *ſhe had no heart*, or *a bad heart*. Miſs Cumming would not admit this; but it was afterwards proved by Miſs Stirling.

State, p. 114. F.

As there is no doubt, therefore, that ſhe was diſſatisfied with the ſchool—that there were cauſes which may eaſily be ſuppoſed to have produced ſuch a diſlike—that ſhe was tired of the diſcipline, and pretended to be unable to execute her taſks; it is certainly not difficult to ſee a motive for raiſing an intrigue to the prejudice of her miſtreſſes. It was juſt the common object of getting rid of the reſtraint of the ſchool, ſtimulated by a little reſentment for the puniſhments and affronts which her own conduct had brought upon her. She was by this time nearly of the age of ſeventeen. She was to remain another year at the ſchool, and the winter was approaching when that year was to begin.

It is extremely poſſible that ſhe did not ſee all the conſequences of her intrigue and calumny when ſhe firſt projected them. She might think that it might never become public; that ſhe might be taken from the ſchool, and perhaps Miſs Munro eſcape from it, without any more happening; and in this view, it was nothing more than an ill-contrived ſtory, to impoſe on the credulity of her grandmother, and induce her to yield to the inclination againſt the intereſt of her grandaughter. Approaching to the age of ſeventeen, ſhe thought it time, it may be ſuppoſed, to ſhake off the trammels of a ſchool, and to begin to be treated as a woman. Theſe are only natural and very common feelings; and when your Lordſhips ſee that they exiſted, together with other motives, there is nothing wanting to account for the ſtory, but to add the capability of telling a malicious falſehood to gain the object—a ſuppoſition at leaſt *as probable*, as that ſuch perſons as the petitioners ſhould, under all the circumſtances of improbability above deſcribed, have committed acts of ſuch ſhocking depravity.

Miſs Cumming had been in the ſchool for *ten months*, before, according to her own account, ſhe ever uttered to any one the idea

of ſuch an imputation on the petitioners. For it was not till two months after the holidays, that is, about 20th September, that ſhe ever ſpoke of it at all; and this is a fact to which Miſs Cumming ſwears in the moſt poſitive terms. She never ſpoke of it to any one till ſhe told it to Miſs Munro the day after Miſs Woods was in Miſs Pirie's bed the laſt time, and that was two months after the holidays. But according to her own account, ſhe had been making obſervations and forming ſuſpicions—in reality forming ſchemes, and applying her invention to accidental circumſtances, from the time of the holidays downwards. If ſhe ſpeaks true, indeed, a circumſtance occurred at Portobello which ought to have excited ſtrong ſuſpicion. But Miſs Cumming ſuſpected nothing then: and as the ſtory is a manifeſt falſehood upon the face of it, the defender ſeeing this, wiſely avoided either inveſtigating it farther, or taking the leaſt notice of it in her pleadings.

Here, however, it is of the utmoſt importance to attend to the order of material facts, as far as it is aſcertained. It in truth reſolves the whole caſe, and fixes beyond doubt the ſource of this abominable calumny.

In the holidays the petitioners ſlept together, and Miſs Cumming ſlept in another bed in the ſame room. She pretends that ſhe was even at this time waked with noiſes; and even that ſhe then heard kiſſing; —and the ſtrange noiſe to be hereafter more particularly attended to. No weight was or could be placed upon this fact. Miſs Cumming herſelf indeed ſays, ſhe had no ſuſpicion at this time; but yet ſhe brings in ſuch circumſtances, to eik out her after ſtory.

After the holidays, nothing occurred *for three weeks or a month.* But Miſs Cumming alleges, that ſubſequent to that period, that is, from about the 20th Auguſt, till about two months after the holidays, or about the 20th September, Miſs Woods came frequently into the bed of Miſs Pirie, where ſhe herſelf ſlept; and ſhe condeſcends particularly upon *five* occaſions, all within that period. Miſs Cumming diſtinguiſhes each of theſe occaſions by certain circumſtances, chiefly in the converſation which ſhe ſays ſhe overheard; but ſhe conveniently refuſes to fix any preciſe dates, or order in which they happened, except that ſhe is quite poſitive concerning the *laſt* of the five, which ſhe deſcribes with great minuteneſs. Thus, the *laſt* time that Miſs Woods is ſaid to have come to Miſs Pirie's bed, and the *laſt* time, of courſe, that Miſs Cumming could make any ſuch obſervations, was at or about the 20th September. She ſwears poſitively, and not without a meaning, that from that time their interviews ceaſed. It may be proper to

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ſtate the evidence of theſe facts. It is given with much waver-
ing and inconſiſtency; but ſtill, as far as it is credible at all, the
reſult is what the petitioners have ſtated.

Miſs Cumming 'Interrogated, and deſired to recollect as nearly as poſſible, when it was, and how long after the holidays that Miſs Woods, by coming into Miſs Pirie's bed, and along with Miſs Pirie doing what ſhe has deponed to, made the witneſs think the conduct of the purſuers improper and indecent? depones, She dare ſay it was *about two months after the holidays*, before ſhe thought there was any thing improper or indecent in what they did.' After ſome croſs interrogatories, which oblige her to alter her ſtatement, ſhe ſays 'She thinks it was *a month* after the holidays that ſhe *began* to *ſuſpect* it; and this was a little before Miſs Munro came to the ſchool, and that it was *two months* after the holidays before *ſhe was ſure of it*.' The time when ſhe ſays ſhe became ſure, is preciſely fixed to be the *laſt* occaſion. 'Interrogated, Did ſhe become certain, that they were indecent at any particular meeting, and if ſo, what meeting was it,' &c.? 'Depones, that ſhe became certain of it *that night*, when Miſs Woods came to Miſs Pirie's bed, and when ſhe aſked her to come 'in, and Miſs Woods ſaid, 'No, it would waken the witneſs, and per- "haps Miſs Stirling." And the circumſtances of the meeting are detailed in many examinations. 'Interrogated, *At what time did 'that meeting take place?* depones, She thinks *about two months after 'the holidays*.' Afterwards, 'Interrogated, How ſoon after the holidays was it, when Miſs Woods came to Miſs Pirie's bed the *firſt* 'time the witneſs obſerved her do ſo? depones, *She does not re- 'member*. Interrogated, Was it a week after the holidays? depones, *She does not remember*. Interrogated, Was it a fortnight 'after the holidays? depones, *She does not remember*. Interrogated, 'Was it three weeks or a month, or five weeks, or ſix weeks after 'the holidays, or can ſhe mark the time at all? depones, She is not 'ſure; but ſhe thinks it would be *about two or three weeks*.' Then ſhe mentions four occaſions after that time, when ſhe was quite awake; and it afterwards appears, ſhe makes a *fifth* in the ſame period, but clearly not the laſt. Then 'Interrogated, Did you mention 'to any perſon what happened on the *firſt* of the four times, and 'how ſoon after? depones, That *ſhe never mentioned it to any perſon, 'till ſhe did ſo to Miss Munro in the front garden*. Interrogated, 'How many of the four times had then happened? depones, *They 'had all happened, and that was the morning after the* LAST *one*.' Interrogated, 'Does ſhe mean to ſay, that Miſs Woods did not come

State, p. 80. G. K.

—— p. 81. B.

—— G.

—— H.

—— p. 81. A.

—— p. 86. C, D.

—— G, H.

—— p. 87. A.

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' to Miſs Pirie's bed after *that* morning? depones. *She never heard*
' *Miss Woods in the bed after that.* Interrogated, At what time of
' the year was that? depones, *She thinks it was about two months af-*
' *ter the holidays.*' The holidays ended 20th July. Thus, it is clear, that all Miſs Cumming's obſervations muſt be dated from about the middle of Auguſt till the 20th September; and the laſt took place about the 20th September.

Now, it further appears in the above quotations, that Miſs Cumming never mentioned the ſubject to Miſs Munro, till *after* he *laſt* time, when ſhe *was quite ſure*; and in detailing the partic lars of that occaſion, ſhe ſays, ' and the *next* morning before breakfaſt, in ' the little garden in front of the houſe, *the witneſs told it to Miſs* ' *Munro*, and Miſs Munro ſaid, that *the other* night, Miſs Pirie had ' been in Miſs Woods' bed, and ſhe heard a curious noiſe, and ' wondered, but *did not know what it was;* but, *after what the wit-* ' *neſs had told her*, ſhe would *watch* the next night; and after- ' wards, Miſs Munro told the witneſs it was all as ſhe had ſaid.' Afterwards, on an interrogatory by Lord Meadowbank, ſhe ' de- ' pones, She does not think Miſs Munro *ever ſpoke to her about it,* ' *till the witneſs mentioned it to her that morning.*' She afterwards depones, ' That ſhe never ſpoke of it to any body till after ſhe was ' ſure;' and ' depones, That ſhe firſt mentioned it to Miſs Munro, ' and *ſhe was the firſt perſon the witneſs ever mentioned it to.*'

Supra, p. 71. I.; 72. A.

— p. 86. I.; 87. A.

— p. 88. C.

— — E.

The teſtimony of Miſs Munro, relates chiefly to *two* occaſions, when ſhe ſays Miſs Pirie was in bed with Miſs Woods. At firſt, it would appear from the depoſition, that Miſs Munro had never ſpoken to Miſs Cumming, till after the *firſt* of thoſe *two* occaſions. But it afterwards turns out, ' that upon a former occaſion, prior to both ' the above, *ſhe waked in a fright*, and thought there was ſomebody ' in bed with Miſs Woods, but could not be ſure of it, nor who it ' was;' and it afterwards appears, that ſhe *had been dreaming* a- bout ſome of her leſſons. But at laſt, upon the croſs-examination, the following important fact comes out. ' Interrogated, Whether, ' after the occcaſion prior to the two times when ſhe is certain the ' purſuers were in bed together, being that on which ſhe has de- ' poned ſhe wakened in a fright, thinking there was ſomebody in ' the bed, ſhe mentioned that circumſtance to Miſs Cumming, or ' to Charlotte the maid, or had any converſation with them about ' it? depones, That *ſhe did mention that circumſtance to Miſs Cum-* ' *ming, and it was upon* THAT *occaſion Miſs Cumming told her ſhe had* ' *been accuſtomed to be ſo diſturbed*, and that ſhe at the ſame time ' added, that Charlotte the maid had told her, Miſs Cumming,

— p. 52. B, C.

— p. 62. A, B. C.

for Nine remarks

' that

'that she had noticed the behaviour of the pursuers.' The last particular will be found to be of no small consequence.

But, in the mean time your Lordships see it here fixed, 1. That Miss Cumming formed the notion of this accusation entirely from her own reflections; 2. That she became *sure* of it upon the last occasion, which was about the 20th September; 3. That she never spoke of it to any one till she was quite sure; that is, till she had made up her own mind upon it, as it has been since developed; 4. That the first person she spoke to after having this pretended certainty was Miss Munro; 5. That neither Miss Munro nor any one else had previously spoken to her on the subject; and, *lastly*, That when Miss Cumming did thus communicate her certainty to Miss Munro, Miss Munro was in absolute ignorance of every thing of the sort. She had once waked in a fright out of a dream, and thought somebody was in the bed, but that was all. She had not the slightest idea of any indecency, impropriety, or any thing else. But Miss Cumming completely clenches the nature of the conversation, by telling your Lordships, that Miss Munro said, that '*after what the witness had told her*, she would watch the next 'night.'

Now, whether there be any truth in this calumny or not, it is as clearly fixed as any fact can be, that *the whole* idea of it originated with Miss Cumming. She had her certainty of it from her own reflections *before she spoke to any one*. Miss Munro was the first person she spoke to; and before she spoke to her, Miss Munro's mind was a complete blank on the subject. It is quite in vain to dispute this point, unless the defender shall at once admit, that both the witnesses are unworthy of credit. If there is any one thing that is fixed by their depositions, it is, that Miss Munro had not an idea upon the subject, until Miss Cumming communicated her full certainty upon all the knowledge which she ever did obtain. But further, there is a matter of real evidence which fixes this if it required any confirmation. Miss Munro says, that she went to the school in the beginning of September; and speaking of the two occasions when she waked out of her dream but knew nothing with certainty. she depones, 'that it was about three 'weeks after she first came to school, when she, for the first time, 'observed the pursuers in bed together, as above deponed to, that 'is to say, some time about the end of September, and the second 'time, she thinks, would be early in October;' the second time is fixed to have been, if at all, between the 6th and 13th of October; and the first was in the end of September. But Miss Cumming's

State, p. 50. A.

See Mary Brown, p. 63. B.; 64. C.

ming's *last* occaſion when ſhe became certain, was at or about the 20th September. So that your Lordſhips have both the direct teſtimonies of the two witneſſes, ſhewing that Miſs Munro had no idea of any thing till Miſs Cumming ſpoke to her after making up her mind, and you have the dates of the alleged facts, as ſeverally fixed by them, ſhewing that Miſs Munro's two occaſions were both ſubſequent to Miſs Cumming's decided communication to her.

As the origin of the ſuppoſition, theory or accuſation, is thus traced, not by conjecture, but to abſolute demonſtration, to Miſs Cumming, ſo it appears, that having once ſet the plot agoing, ſhe loſt no time, and ſpared no pains to work it into ſomething like conſiſtency. Having thus poiſoned the mind of Miſs Munro, and led her to miſinterpret and pervert the ſimpleſt circumſtances; ſhe employed herſelf for weeks after, in endeavouring to create the ſame belief in Miſs Stirling. For it will clearly appear, that Miſs Stirling alſo got all her ideas from Miſs Cumming. By perpetually ſpeaking on the ſubject, ſhe raiſed a prejudice amounting to a firm belief, which, when inveſtigated, turns out to reſt upon no ground of knowledge or obſervation, but excluſively upon that perpetual talking. But it farther appears, that in order to give a better colour to her hypotheſis, ſhe was conſtantly telling to Miſs Munro and Miſs Stirling, pretended converſations with Charlotte the maid, and reporting obſervations ſuppoſed to be made by her, which neither had nor could have any exiſtence. The petitioners entreat your Lordſhips to ſuſpend a little your judgment on this point. For though it is neither the object nor the buſineſs of the petitioners to vindicate the veracity of the defender's witneſs, they think they can demonſtrate, that unleſs Miſs Cumming be *admitted* to be *perjured*, ſhe did moſt certainly pretend to have converſations with Charlotte which ſhe never had. But this is matter for future conſideration. If Miſs Cumming be believed, it appears, that upon the very ſame day upon which ſhe made her firſt communication to Miſs Munro, that is, on the day after her laſt occaſion, when ſhe became certain, a plot was deviſed, as ſhe ſays, to let their miſtreſſes know that *they* knew what was going on. The time of this does not depend upon any date. It is fixed as a matter of neceſſity, by the nature of the fact told: 'Miſs Munro and the witneſs wiſh-
'ed to let them know that they knew it, and were to have
'ſpoken of it at breakfaſt-time, but they loſt courage: That *on*
'*the ſame day*, (fixed by what immediately precedes,) when they
'were

State, p. 72. H. I.; 73. A.

' were out walking, ſhe told Miſs Munro that ſhe would complain
' of it, and of being tired, and that ſhe could not get ſleep, and
' ſhe deſired Miſs Munro to put the queſtion to her, Did you not
' ſleep well? and that the witneſs would anſwer, ſhe could not
' ſleep, for the bed was ſhaking ſo; and when they came in from
' their walk, Miſs Pirie was in the room, and the witneſs did
' complain, and the converſation took place as had been agreed
' on.' Miſs Pirie knows of no ſuch converſation, and therefore believes it to be abſolutely falſe; and accordingly it is proved to be falſe, by the contradiction direct, and not depending on dates, but on facts neceſſary to its exiſtence, between the accounts of Miſs Cumming and Miſs Munro. But your Lordſhips will at preſent obſerve, that if it took place at all, it could take place at no other time but the day which Miſs Cumming fixes for it, the day after her laſt occaſion: For, 1. She had never *before* ſpoken to Miſs Munro on the ſubject; 2. *Miss Cumming was the person who complained* that *she* had been prevented from ſleeping *the immediate night before*, by *the shaking of the bed;* and, 3. She has ſworn moſt poſitively, *that Miss Woods never was in the bed after.*

See, then, how the caſe ſtands, if Miſs Cumming ſpeaks truth. Having made up her own mind, ſhe poiſons the mind of Miſs Munro with the ſame idea. She does the ſame with Miſs Stirling; and ſhe does not leave even an inſtant, without *falsely* pretending converſations with Charlotte, which ſhe has herſelf ſworn had not taken place. And then, *upon the very same day*, even *before* Munro had *had an opportunity* of availing herſelf of theſe valuable inſtructions, ſhe makes a plot with Miſs Munro to affront her miſtreſs; and ſo completely ſucceeds in prejudicing the weak mind of Miſs Munro, that ſhe gets her at once to join in that plot. There cannot poſſibly be ſtronger evidence of her operations on the mind of Munro, or of her complete ſucceſs in them. before either of Munro's occaſions could have taken place, than ſhe has herſelf given your Lordſhips, unleſs ſhe be in this point directly perjured. But the origin of the ſtory is thus traced to Miſs Cumming—ſhe formed it from her own reflections; and ſhe alone fixed it in the mind of Miſs Munro, before the latter had obſerved any one thing to create even an imagination of it.

As this fact will not admit of any queſtion, and is of itſelf of the deepeſt importance, it becomes of great conſequence to eſtimate the value of Miſs Cumming's own teſtimony, before attending to the depoſitions of Miſs Munro and the other witneſſes. For, with great ſubmiſſion, if it ſhall appear that Miſs Cumming

is

is not entitled to credit; if it ſhall appear that ſhe has wilfully invented or perverted, or concealed material facts, influencing the nature or circumſtances of this charge, the petitioners apprehend, that nothing can be more impoſſible, nothing, with deference, more idle, than to argue, that this abominable libel, *demonſtrably originating with her*, can be bolſtered up by means of any of the other depoſitions. Once let it be ſettled, that Miſs Cumming is unworthy of credit, and then the whole vaniſhes into air; your Lordſhips then ſee the ſource of it; and ſeeing that ſource to be falſe and calumnious, you muſt attribute all that flowed from it to the prejudices, to the weakneſs, to the natural love of the marvellous, in thoſe to whom ſhe retailed her pretended diſcoveries.

In this inquiry, it is impoſſible to forget who Miſs Cumming is, and the ſituation in which ſhe ſtands in regard to this cauſe. She is the acknowledged grandaughter of the defender. She is entirely dependent upon her, having no ſecurity for her rank or exiſtence in ſociety but the good will of the defender. If ſhe offended her in any thing elſe, ſhe might run the hazard of ruin. But the matter is much ſtronger in the preſent queſtion. She is the acknowledged author of the calumny; and though the defender has retracted her original ſtatement, that ſhe acted upon her authority alone, it is not denied, that ſhe was the firſt reporter of the ſlander. She it is, who has led her grandmother to propagate the ſtory to the ruin of the petitioners. If ſhe had not ſupported it, how muſt ſhe have ſtood in regard to the defender? Even regarded in her mere individual relation, ſhe muſt have appeared as a perſon, who, by a malicious falſehood, had led her grandmother to commit the moſt atrocious wrong that could be committed by a lady of character. The defender muſt have felt herſelf not merely miſled into the greateſt injuſtice, and made liable in ſevere damages to the petitioners, but held up to the world in a light at once the moſt unamiable and the moſt ridiculous. But even this is not all: Miſs Cumming herſelf, beſides forfeiting her grandmother's good opinion or protection, muſt have been ruined in her perſonal character and ſtate. The conſequences are well deſcribed by the defender herſelf: 'Should we fail in eſtabliſhing a 'complete proof, it lands all who are concerned in the charge of 'being *the inventors of this moſt horrible ſtory*.' Your Lordſhips will judge how far Miſs Cumming did not ſee, that ſhe, proved to be the original ſource of the whole, could never have lifted up her head in the world, if, when ſhe came before your Lordſhips, ſhe had

had not made every effort to ſupport the ſtory. She comes, therefore, as a witneſs, with almoſt every poſſible objection to her credit,—relationſhip, dependence, the moſt dreadful intereſt that ever a witneſs had. If ſhe had been a lawful grandaughter ſhe *could* not have been admitted at all. But while your Lordſhips allowed her to be received as a witneſs, you received her only *cum nota*, and with the moſt expreſs reſervation of all objections to the credit of her teſtimony; and every one of your Lordſhips who was preſent at the time, declared that the objections to her credit were of the very greateſt weight, and that every thing ſhe ſaid was to be eſtimated with a juſt recollection of thoſe objections.

The petitioners avail themſelves of that reſervation, though they acquieſced in the interlocutor admitting her. And in the mere entry upon her teſtimony, it appears that the perſon who firſt broached the idea of this charge, and who firſt communicated it to the other witneſſes, is a perſon received only *cum nota*, and liable to the very ſtrongeſt ground of ſuſpicion.

The petitioners aſk, Whether the *manner* in which ſhe gave her teſtimony had any tendency to remove thoſe grounds of ſuſpicion? Did it ſhew fairneſs, conſiſtency; an equal diſpoſition to tell what made for and what made againſt the petitioners? There was no embarraſſment ariſing from the indelicacy of the caſe. She told all the groſs details with the utmoſt facility, minuteneſs and volability. But upon the plaineſt queſtions, which went to try the truth of the particulars, ſhe *ſat in dead ſilence for ten minutes at a time*. The petitioners have no need to exaggerate; but they may certainly ſtate the opinion of the Right Honourable Judge who preſided in the examination, that the manner and circumſtances of the depoſition were ſuch, that he much feared he had done wrong in not committing her; and that, in fact, he had, in conjunction with another learned Judge in the Criminal Court, very recently ſent a witneſs to jail for prevarication, which did not appear to his Lordſhip to be worſe. And accordingly, when your Lordſhips come to the examination of this teſtimony in the particulars, you will ſee that it is full of direct concealment, and affected want of recollection in every thing that may make for the petitioners—of the moſt violent exaggerations and utmoſt minuteneſs in every thing that is againſt them—of inconſiſtencies and contradictions without number—and of the moſt evident ſtudy to accompliſh the object, and to extricate the difficulties in which her own ſtatements involved her.

The petitioners muſt alſo beg your Lordſhips to recollect, that the accounts of the ſtory given in the pleadings, in the written ſtatement, and in the Condeſcendence, all came from Miſs Cumming; and it will of conſequence be neceſſary to compare them in ſome particulars with the ſtatements which have been ſince given.

All the facts that are material to be conſidered in this depoſition took place between the middle or end of Auguſt, and ſome time about the 20th of September. It is proved, that about the end of Auguſt the violent rupture took place between the petitioners, in conſequence of which Mrs Woods kept her own room, and particularly ſupped there; and it is proved, that from that time Miſs Woods conſtantly ſupped in her aunt's room. And Mrs Woods expreſsly ſwears, 'That when Miſs Woods ſupped with the wit-'neſs, ſhe *was always in her day dress*, as far as the witneſs recol-'lects;' and ſhe was ſo upon a particular occaſion to be afterwards mentioned. No witneſs could be more evidently fair than Mrs Woods; and your Lordſhips cannot have any doubt of the fact. But the conſequence of Miſs Woods ſupping with Mrs Woods inevitably was, that whenever ſhe happened to be later up than Miſs Pirie, ſhe had to paſs through the room where Miſs Pirie and Miſs Cumming were in bed; and it is particularly proved, ſo clearly as not to be a matter of queſtion, that Miſs Woods on one occaſion continued with her aunt longer than they were aware of, and until day broke.

Now, it is certainly extremely ſingular, that throughout Miſs Cumming's depoſition it does not appear that Miſs Woods was ever ſeen or known by that lady to be in the room *in her day dress*. This is a thing entirely ſuppreſſed. But, though it may be ſaid that Miſs Cumming did not obſerve her, your Lordſhips will be pleaſed to remark, that there is *not a veſtige of proof* that Miſs Woods *did ever, even in one ſingle inſtance, leave her own bed* where Miſs Munro ſlept, or leave her own room after being once in bed.

The ſcenes deſcribed by Miſs Cumming, as given by her at firſt, repreſented the petitioners as both completely naked to their *ſhifts*; and, even after the reſult of the croſs-examinations, the petitioners hope to ſhew, that thoſe deſcriptions are abſolute nonſenſe on any other ſuppoſition. But as Miſs Cumming profeſſed never to have known Miſs *Woods* to be in the room with her day dreſs, ſo *during four days'* long examination ſhe carefully concealed this moſt important fact, that Miſs Pirie always or generally ſlept with

with *ſtockings, with a petticoat, and with a large wrapper which covered her whole body.* Look at the examination. It begins on the 69th page of the State. Every thing is detailed with the utmoſt minuteneſs. All the ſtory about lifting up the ſhifts, feeling their legs, their naked bodies, &c. is inveſtigated. The circumſtance of the *ſtockings* comes out, and forces the witneſs to alter her ſtatement. But till the very *laſt half hour* of the *laſt* day's examination, on page 98. of the State, not one word was ſaid about Miſs Pirie's wrapper and petticoat! How important they were will be preſently ſeen. But they were important the wrong way for Miſs Cumming, and therefore ſuppreſſed. At laſt the petitioners ſuggeſted the queſtion to their counſel, and Miſs Cumming was fully aware that it could be proved by other witneſſes; and therefore, 'Interrogated, Did Miſs Pirie uſually ſleep with a *bed-gown* and *wrapper* and *petticoat* on? depones, *That ſhe did.*' Miſs Stirling afterwards, 'Interrogated for the purſuers, depones, That 'Miſs Pirie generally *ſlept with a bedgown, petticoat and ſtockings.*' And Charlotte Whiſſin confirms the ſtatement, though ſhe does not know as to the petticoat.

State, p. 98. A.
— p. 113. F.
— p. 105. I.

Now, the petitioners aſk, whether your Lordſhips can reconcile this evident concealment of a material fact with any kind of fairneſs? Even the ſtockings, when detected, did not bring it to her recollection. Nay, ſhe had directly ſworn to a fact in ſuch terms as to exclude the ſuppoſition altogether; and ſhe had her ſenſes ſo perfectly about her, that in *the very laſt line* of her depoſition, finding that the bedgown and petticoat had come out, ſhe made a correction of the moſt eſſential importance.

In the *firſt* day's examination, Miſs Cumming expreſsly deponed, 'That one night before ſhe had obſerved any thing at all be-'tween them, ſhe ſaw Miſs Woods and Miſs Pirie come into the bed-'room, and both of them had nothing on but their night-ſhifts, 'and the witneſs ſat up in bed, and was *quite ſurprized to ſee them*, 'and Miſs Woods went to the foot of the witneſs's bed as if to *hide* 'herſelf, but the witneſs *ſaw her quite plainly*, as the window was op-'poſite to the foot of the bed, and Miſs Pirie went out of the 'room, but the witneſs does not know what became of Miſs 'Woods, *as ſhe fell aſleep.*' Your Lordſhips were left *for four days* to believe this to be the abſolute fact; and, except on the ſuppoſition of the petitioners being truly in their *ſhifts*, the ſtatement had evidently no relevancy or meaning at all. But at laſt, at the very end of the *fourth* day's examination, and when *the depoſition of that day only was read over* to the witneſs, the record bears: 'Up-'on

— p. 74. B, C.

— p. 99. A.

'on the depoſition being read over to the witneſs, ſhe deſired it 'might be added to it, that when, on a former diet, ſhe ſaid ſhe 'had obſerved the purſuers in their *night*-SHIFTS, ſhe meant their 'night THINGS in general,' &c. The petitioners ſubmit to your Lordſhips, if there can be any thing more manifeſt than that this witneſs was ſtudiouſly concealing the fact of the bedgown and petticoat, and that when ſhe at firſt ſpoke of ſeeing them in their night-*ſhifts*, ſhe meant it to be ſo underſtood. But the correction farther ſhews the extreme art of the witneſs, and the minuteneſs of her recollection in purſuing the object. If ſhe had ſaid night-*ſhifts* by mere miſtake, intending it for night-*things*, it is impoſſible that ſhe ſhould have thought of the correction, or recollected the expreſſion *at the end of four days*.

delicate & important remark

Having given theſe ſpecimens of the fairneſs of the witneſs upon points which go deep into the ſubſtance of her depoſition, the petitioners have next to remark the extreme abſurdity of the general aſpect of her ſtatement, and its incredibility from other cauſes than thoſe hitherto obſerved. She confines her recollection to five occaſions, though ſhe ſpeaks of many others. Upon theſe five occaſions, ſhe repreſents converſations carried on in a connected form, which ſhe details minutely as having taken place ſo audibly as to enable her to repeat them. Theſe converſations ſhe gives in the moſt dramatic ſtyle, exhibiting them as expreſſive of the groſſeſt luſt. On the particulars, it will appear, that her knowledge did not ſerve her to the extent of her powers of invention, as they are truly inconſiſtent with the object attributed to them. But theſe converſations are carried on *audibly;* the bed is made to ſhake with a noiſe; and beſides all this, there is another noiſe which nobody can comprehend or imagine. Now, ſuppoſing your Lordſhips could conceive, that the petitioners were ſo perfectly frantic as unneceſſarily to come for ſuch a purpoſe into a room where there were *four* other perſons, and into a bed where one of the *eldeſt* was almoſt in contact with them, is it credible, that they ſhould have talked aloud about what they were doing, or what they intended? So much talking is in itſelf inconſiſtent with the *paſſion* ſuppoſed. But after throwing away all other chances of ſafety, is it conceivable, that Miſs Woods, coming for ſuch a purpoſe, and actually being in bed, they ſhould chatter aloud to warn the witneſſes around them?

It is hard for human credulity to receive ſuch a ſtatement. But it is even harder to conceive, that in all theſe numerous interviews always accompanied with ſo much talking and other noiſe, contr

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nued for half an hour at a time, it ſhould never by any chance have happened that Miſs Stirling ſhould have awaked. And yet Miſs Stirling has expreſsly ſworn, that though her bed was within two feet, or two feet and a half at moſt, of Miſs Cumming's bed, ſhe never heard any thing except on two occaſions, both of which Miſs Cumming has ſuppreſſed. Miſs Stirling, 'Interrogated, Did ſhe ever obſerve any thing improper take place in the bed where Miſs Cumming and Miſs Pirie ſlept? depones, '*She did not*. Interrogated, If ſhe was induced, by the information ſhe received from Miſs Cumming, to attend to what paſſed 'in that bed, ſo far as ſhe had an opportunity of obſerving it? depones, That ſhe never had it in her power, for ſhe always fell 'aſleep; and *ſhe never was awaked or diſturbed* but twice.' And the two occaſions which ſhe mentions, inſtead of ſupporting Miſs Cumming's theory, *plainly* originated in the quarrels of the petitioners, and ſhew the unhappineſs of Miſs Pirie on account of them. But, though Miſs Stirling never heard any thing, Miſs Cumming is pleaſed to make an effort to ſupply that defect; for ſhe ſays, that ſhe had often miſſed Miſs Pirie out of bed; and 'one night when Miſs Pirie was out of bed, *Miss Stirling and ſhe were talking about it*, their beds being quite cloſe; and meanwhile Miſs Pirie came in,' &c. Miſs Stirling, however, *knows nothing of any ſuch incident*; while, on the other hand, Miſs Cumming ſuppreſſes altogether the two occaſions when Miſs Stirling was really diſturbed. They would have ſhewn what really brought the petitioners together occaſionally, and produced the agitated ſtate of their minds; and therefore they did not accord with Miſs Cumming's theory.

State, p. 112. H, I.

—— p. 73. I.

Miſs Cumming condeſcends on five occaſions. Four of theſe occaſions are jumbled together, without order or date; the fifth ſtands *laſt*, and the time, nature, and circumſtances of it have been fully inveſtigated. But as the petitioners wiſh to give the teſtimony full juſtice, and anxiouſly court the moſt minute attention to it, they will now conſider the five ſeveral occaſions, though of courſe the order of the firſt four is, according to Miſs Cumming, quite arbitrary.

It would have made a very ſimple cauſe, if Miſs Cumming had been allowed to run on with her ſtory, as ſhe may have done to the defender. But the witneſs being required to diſtinguiſh the times as much as poſſible, the following is the firſt reſult.

State, p. 70. G. 1. Miſs Cumming depones, 'That ſhe does not remember the 'different times: That ſhe has been awakened different times by 'their kiſſing and whiſpering, but did not know what: That ſhe 'heard Miſs Pirie ſay *one* time, '*O, you are hurting me.*" Your Lordſhips will be pleaſed to obſerve, that this is *literally all* that, on the direct examination, ſhe had to ſay in regard to this one occaſion. for deſcribing the actual practice of this abandoned luſt. And how is it extended upon the croſs-examination? 'Interroga-'ted, and deſired to mention all that paſſed between Miſs Woods 'and Miſs Pirie, on the occaſion when ſhe heard Miſs Pirie ſay, — p. 90. H, I; 91. A. "O, you are hurting me?' depones, *That ſhe does not recollect any-'thing more at preſent*, except that ſhe felt one of them move, 'which ſhe thinks was Miſs Woods; and thereafter Miſs Woods 'went away; but ſhe does not think that Miſs Woods was moving 'at the time Miſs Pirie made that obſervation; and ſhe thinks it 'was Miſs Woods who was lying above Miſs Pirie at the time 'of that obſervation, becauſe it was Miſs Woods who went 'away.'

This is *the whole* ſtatement upon one occaſion. Miſs Cumming has no more to ſay. And yet becauſe Miſs Pirie, as ſhe pretends, ſaid, 'O, you are hurting me,' the imagination of Miſs Cumming concludes or ſuſpects that there was an infamous venereal congreſs! Suppoſing that Miſs Woods had been in the bed, *which ſhe moſt certainly never was*—ſuppoſing that Miſs Pirie had uſed the words mentioned—ſuppoſing that any thing had occurred to give riſe to them—the petitioners aſk your Lordſhips, whether it is evidence of any thing, or whether your Lordſhips can give the ſlighteſt credit to the mind or imagination of a perſon who conſtructs upon circumſtances ſo perfectly trivial, the ſuppoſition of a crime that never was heard of before? She has abſolutely nothing elſe to go upon, except that which ſhe applies generally to every caſe that there was whiſpering, and kiſſing, and ſhaking the bed. On this the petitioners will ſay all that ſeems to be neceſſary, after diſpoſing of the particulars of each occaſion. In the mean time, nothing can be more utterly frivolous than the converſation which ſhe reports as to this time, as affording the ſlighteſt conjecture to a Court, that there was ſomething criminal proceeding. If Miſs Pirie had been rubbed for the rheumatiſm, *which it is clearly proved ſhe was*, it would have been the moſt natural expreſſion poſſible.

2. The ſecond occaſion is nearly the very ſame. In the direct examination, Miſs Cumming proceeds: 'And ſhe heard Miſs Woods

'one

'*one* time aſk Miſs Pirie, *if she was hurting her*, and Miſs Pirie 'ſaid, '*No.*' This is all. Upon the croſs-examination, 'Inter-'rogated, and deſired to mention *all that happened* on the occaſion, 'when Miſs Woods aſked Miſs Pirie, *if she was hurting her?* de-'pones, '*Nothing.*' but that *she felt one of them move*, which ſhe 'thinks was Miſs Woods, who afterwards went away; and for the 'ſame reaſon, ſhe thinks Miſs Woods was then lying upper-'moſt.'

This is the *whole* account of another occaſion. It requires no commentary. Nothing but the moſt polluted imagination poſſible would dream of ſuch a concluſion from an incident of that nature, if it *had* taken place. Indeed the two compared together bear evident marks of a ſtruggle to make ſeparate occaſions where the invention of the witneſs did not ſupply her with ſufficient variety.

3. A third occaſion, though it is not that on which Miſs Cumming reſts, requires the moſt minute attention of your Lordſhips. 'And ſhe heard Miſs Pirie ſay one night, '*You are in the wrong* State, p. 70. H.
"*place;*' and Miſs Woods ſaid, 'I know;' and Miſs Pirie ſaid,
"Why are you doing it then?' and Miſs Woods ſaid, '*For fun.*'
In one part of the croſs examination, the witneſs 'Interrogated, —— p. 91. C.
'and deſired to mention *all that happened* on the occaſion, when 'Miſs Pirie ſaid, 'You are in the wrong place,' &c., as deponed 'to on page 39.? depones, That ſhe remembers *nothing*, but that '*Miss Woods moved after this conversation* had gone on, and ſoon 'afterwards went away.' And upon a ſpecial interrogatory by the Court, the following very ſingular depoſition is given: 'And —— p. 84. A, 'being interrogated in particular, Whether, when ſhe ſtates, as B.
'above deponed to, that one of them ſaid to the other, 'O, you "are in the wrong place,' ſhe is quite certain that they might 'not have ſaid *on* the wrong place? depones, That *she is quite* '*certain!* the words uſed were, '*In* the wrong place!"

Now, with great deference, it appears to the petitioners to be a matter of abſolute neceſſity, that your Lordſhips ſhould determine *whether you will believe this ſtatement or not.* It muſt either be believed or diſbelieved. If it be believed, then, 1. Your Lordſhips muſt give Miſs Cumming credit for an accuracy of ear in liſtening to whiſpers, ſtammered out in the heat of maddening luſt, which you will not take to yourſelves in liſtening to the graveſt and moſt articulate ſtatement that ever was made at your Lordſhips' Bar, or cloſe to you face to face. But, 2. The *determined certainty* of the witneſs upon ſuch a diſtinction, muſt lead you to conclude

conclude the utmoſt pollution of imagination, and a degree of inveteracy utterly inconſiſtent with any ſuppoſition of fairneſs in giving her teſtimony. And, 3. Your Lordſhips muſt be prepared to conclude that you are not even trying that ſpecies of abominable perverſion, of which the defender has ſtruggled to prove the exiſtence from fabulous and obſcene books, but that you are trying a degree of beſtiality that never was equalled in the hiſtory of the world. You have a *double* unnatural crime. For the meaning of Miſs Cumming is not to be evaded. If ſhe attached *any* idea to the words, 'You are *in* the wrong place,' as having any influence on the preſent queſtion whatever, and particularly if ſhe attached any meaning to the word '*in*,' as diſtinguiſhed from the word '*on*,' it implies, as diſtinctly as words can imply, the groſs abomination which the petitioners dare not even deſcribe. But that ſhe had this meaning, will be well recollected by thoſe of the Court, who witneſſed the keenneſs, the inſtantaneous facility, the *teeth* and *bitterness*, as it was well expreſſed by the preſiding Judge, with which ſhe anſwered the ſpecial interrogatory, 'That ſhe is *quite certain* the words uſed were *in* the wrong place.'

Again, the petitioners aſk, is this believed or not? They aſk the defender. Does *ſhe* believe it? And they expect a direct anſwer to the queſtion. They ſubmit it to your Lordſhips, whether it can be believed, whether it is not ſuch an outrage to all reaſon and common ſenſe—an idea ſo abſolutely diſguſting—that no woman could have permitted herſelf to be *certain* upon ſuch a particular, who was not prepared to go any length to ſerve her own manifeſt intereſt in the cauſe.

More particular remarks might be made upon this horrible conception. But it is ſo nauſeous that it is impoſſible. In the mean time, the petitioners ſubmit, that the queſtion muſt be anſwered, whether the ſtatement of Miſs Cumming is believed or not? She is not doubtful—ſhe has no defect of memory here; ſhe is *certain*; ſhe is not merely certain, but *quite* certain, that the word was *in*: And ſhe gave it with a deciſion that nothing could exceed. Your Lordſhips therefore muſt be prepared to give her credit for that certainty, and the manifeſt object of it. The petitioners humbly think, that not one of your Lordſhips can believe it.

And yet if it is *not* believed, what is the inevitable conſequence? You ſee the meaning quite plainly. You ſee the determination of the witneſs. And when you notwithſtanding diſcredit the aſſertion, you ſet down at once the diſbelief of her *most* poſitive aſſeveration,

veration, and the evidence of the moſt awful malice, and the moſt inconceivable corruption of imagination.

All other obſervations upon this third caſe are ſwallowed up in the very idea which it ſuggeſts. But at the ſame time the dialogue as it is given, is abſolute nonſenſe, as a repreſentation of an ungovernable unnatural paſſion. 'In the wrong place'.—'I know'.—'Why are you doing it then?'—'*For fun.*' This is not the courſe of human conduct or language in ſuch caſes. It could not be a matter of *fun* and diverſion. Here Miſs Cumming's knowledge of the ſubject failed her. She deſcribes as a ſcene of furious luſt what has not the ſlighteſt reſemblance to the ordinary concomitants of ſuch feelings. It is indeed in perfect hoſtility to them.

4. The fourth occaſion, though out of its order, was at firſt ſtated thus: 'She wakened another night, and ſhe heard Miſs Woods 'ſay, 'Now, Jane, will you promiſe me one thing?' and Miſs 'Pirie anſwered, 'I don't know; What is it?' and then Miſs 'Woods ſaid. 'Now Jane, will you promiſe not to come to my "bed, or take me in your arms till the holidays?' and Miſs Pirie 'replied, 'O! Mary-Anne don't aſk me, for you know I could "not keep it if I were to promiſe;' and then Miſs Woods ſaid, "O! do promiſe, and I'll take care you ſhall keep it;' but Miſs 'Pirie would not promiſe; but Miſs Woods ſaid, as if Miſs Pirie 'had promiſed, 'Nor will I take you in my arms, or come to "your bed till the holidays; but you may kiſs me, and I will kiſs "you;' and then Miſs Woods went away, and ſhe does not recol-'lect any thing elſe that happened on this occaſion.' This was deſcribed as one of the occaſions on which the petitioners ſuppoſed ſhe alleged that Miſs Woods had been in bed. But on the croſs examination, ſhe depones, 'That ſhe does not remember *any* State, p. 91. D.
'*thing more*, and that ſhe has not ſaid, and does not think they were 'in bed together that night, becauſe ſhe did not perceive them.'

But though the occaſion reſults in nothing, it is ſuch a lively repreſentation, and furniſhes ſo admirable a ſpecimen of the witneſs's power of enlarging her ideas, and embelliſhing the dialogues which ſhe recites, that the petitioners muſt beg leave to bring under your Lordſhips' notice the firſt edition of this converſation, as it was told to Miſs Stirling, and is ſworn to by her. Miſs Stirling, 'Being interrogated, If Miſs Cumming told her much of theſe —— p. 114. B,
'converſations? depones, That ſhe ſaid *they always began with* C.
'Miſs Woods aſking Miſs Pirie, '*Have you on your ſtockings,*'
'and another time, that Miſs Woods ſaid, 'Not to-night, for it "may awaken Miſs Stirling, and perhaps Miſs Anſtruther;' and

'that the one ſaid to the other, '*Love me as I love you;*' and ſhe 'does not remember any thing elſe diſtinctly, and therefore does 'not wiſh to ſpecify it.' Your Lordſhips will have obſerved, that though Miſs Cumming had repreſented to Miſs Stirling the ſtockings as the *general* commencement of the converſations, ſhe never once mentioned them in her whole ſtatement to your Lordſhips. But the remarkable words are the laſt: '*Love* me as I *love* you.' They are words which may have been ſpoken, though the petitioners have no recollection of them—words, natural to their ſituation and feelings—'Love me as I love you—and *then we ſhall* '*have no more quarrels.*' They accord exactly with their ſituation, and the natural conſequences of it, which the petitioners at firſt ſtated. But ſee how Miſs Cumming interprets and embelliſhes, when ſhe comes to make out her calumny before your Lordſhips. Theſe words are changed into 'But you may *kiss* me and I will *kiss* you.' The petitioners preſume your Lordſhips believe Miſs Stirling in preference to Miſs Cumming. And as Miſs Cumming has reported no other converſation containing the words which arreſted Miſs Stirling's attention, your Lordſhips have direct evidence, that Miſs Cumming has changed the words from what ſhe originally repreſented them to be, and changed them for a groſs and manifeſt reaſon, to convey a totally different meaning from that which the words really uſed bore.

And, with deference, when your Lordſhips have this example of ſuch a change proved ſo directly by the very beſt witneſs of the defender, it cuts up by the roots the credit of Miſs Cumming, in regard to all the other converſations, and even actions of the petitioners. *The change of one word alters the whole ſenſe.* You have already ſeen the obſtinacy with which ſhe inſiſts upon a mere particle, againſt all belief, and in order to change the meaning. Here is an equally conſpicuous example of a ſingle word altering the ſenſe; with this difference, that you have here direct evidence, on her own authority, that ſhe is miſrepreſenting the word. There is no part of the alleged dialogues in which a very ſlight alteration would not totally alter the meaning; and they are ſo jumbled together, that your Lordſhips have no certainty that any trivial occurrences on which they may be founded, may not have been all combined in one ſingle interview of five minutes duration.

And now the petitioners humby think, that if the caſe ſtood upon the four occaſions which have now been alluded to, your Lordſhips could not heſitate for an inſtant upon the caſe. But they farther apprehend, that before arriving at the fifth and main occaſion,

ſion, the credit of the witneſs is totally deſtroyed. It will be ſeen whether it is repaired, or in any degree ſuſtained, by fairneſs and conſiſtency, in this the ſuppoſed deciſive point.

5. Miſs Cumming depones, That 'ſhe wakened one night with 'a whiſpering, and heard Miſs Pirie ſay, 'O, do it darling,' and 'Miſs Woods ſaid, 'Not to-night.' Miſs Pirie aſked he two 'or three times, and then Miſs Woods ſaid, 'O, not to-night, "for it may waken Miſs Cumming, and perhaps Miſs Stirling." 'Then Miſs Pirie preſſed her again to come in, and ſhe lay above 'Miſs Pirie: That Miſs Woods began to move, and ſhe ſhook the 'bed, and ſhe heard the ſame noiſe as ſhe heard in the holidays. 'And being deſired by the Lord Juſtice-Clerk to deſcribe the kind 'of noiſe as near as poſſible? depones, That *putting one's finger in-* '*to the neck of a wet bottle is the* LIKEST *deſcription ſhe can give of* '*it*: Then the witneſs aſked Miſs Pirie, What was ſhaking the 'bed ſo, and Miſs Pirie anſwered 'Nothing;' and when ſhe ſo 'aſked Miſs Pirie what was ſhaking the bed ſhe felt Miſs Woods 'move over to the other ſide of the bed; and ſhe thinks it was 'that night ſhe heard Miſs Woods ſay. 'I would like better to "have ſomebody above me." Referring to the ſame occaſion, ſhe ſays, 'The witneſs lay awake a long while, and complained 'that ſhe could not ſleep, and Miſs Pirie deſired her ſeveral times 'to turn her face to the wall, and try to ſleep; but the witneſs 'did not turn, and ſaid that ſhe could not ſleep; and then Miſs 'Pirie turned and ſaid, 'Now you muſt turn, as I have turned;' 'and then ſhe heard Miſs Woods go out of the room; and when 'Miſs Woods came to the door Miſs Pirie coughed, *that the wit-* '*neſs might not hear it opened*; and a little while after Miſs Woods 'was gone, Miſs Pirie ſaid to the witneſs, 'Have you heard Miſs "Woods cough to-night?' and the witneſs ſaid, 'No;' in a 'little Miſs Woods coughed, and Miſs Pirie ſaid, 'O, there ſhe's "coughing, poor ſoul! I muſt go and ſee her,' and ſhe went. '*When Miss Woods came to bed that night, the witneſs felt them both* '*lift up their ſhifts.*'

p. 71. I.; 72. A, B, C.

—— p. 72. F, G, H.

It is impoſſible not to obſerve, that there is here the utmoſt perfection and minuteneſs in the ſuppoſed *dialogue*, mixed up with inferences and inſinuations of the witneſs's own; but, on the other hand, the moſt careful avoidance of particularity as to the manner and circumſtances of the *acts* which ſhe relates. It appears from her depoſition, that ſhe *became certain* of the criminality of the petitioners upon this occaſion, as already ſhewn; and it was about two months after the holidays. 'Interrogated, and 'deſired

—— p. 82. A.

'desired to mention the circumstances from which she became
'certain that the pursuers were indecent together at that meet-
'ing? depones, That when Miss Woods came into bed, *she felt*
'*them both take up their shifts*, and she felt Miss Woods move and
'shake the bed, and Miss Woods was breathing so high and so
'quick. Interrogated, depones, Miss Woods was lying above
'Miss Pirie at this time, and *she heard the same noise* she has al-
'ready described, and she thinks it was the same night she heard
'Miss Woods say, 'She would rather have somebody above
"her."

There were evidently, in the whole of this statement, several matters of *fact*, independent of conversation, which, if true, admitted of, and required a more particular description: 1. The nature of the noise so singularly described, and *the circumstances which led the witness to consider that as decisive of indecency or criminality.* 2. *In what manner she felt* the petitioners put down their hands *and pull up their shifts.* 3. The exact position in which she felt the petitioners. 4. The high breathing in one of the parties. These and other particulars were accordingly investigated, as far as it was possible with Miss Cumming; and the progress and result of the investigation well deserves the attention of the Court.

The presiding Judge, struck with the singularity of the mode of describing the alleged noise, had himself made the experiment; and having found that putting his finger in the neck of a wet bottle *made no perceptible noise at all*, his Lordship thought it proper to interrogate
State, p. 82. C, D. the witness on the point. 'Interrogated by the Lord Justice-Clerk,
'How long the noise she has described as resembling a finger in a
'wet bottle lasted? depones, She dare say for *about five minutes* at
'a time. And interrogated, depones, It happened *three or four*
'*times during that meeting*, but does not remember whether it lasted
'as long as five minutes each time. Interrogated, Whether she
'ever herself made any such noise with her finger in a wet bot-
'tle, or if she ever heard any other person make such a noise
'with their finger in a bottle? *depones, She never did, nor did she*
'*ever hear any person try to do so.* Being interrogated, How she
'came to describe a noise which she actually heard, by being most
'like to a noise which she never heard? depones, Because she
'thought it would be the same.' His Lordship then endeavoured
—— G, H. to get some better description of it, and particularly asked, 'If
'she has ever heard a dairy-maid making up butter, and if it
'was any thing like a dairy-maid patting butter? depones, That
'it was, and it was so loud, that she heard it in the holidays,
'though

'though lying in a ſeparate bed. Interrogated, Whether ſhe had 'ever heard any ſuch noiſe before or ſince, except between the 'purſuers? depones, She does not remember ſhe ever did. Inter-'rogated, Whether any perſon had ever told her that any ſuch 'noiſe took place between perſons when they were indecent to-'gether? depones, No. Interrogated, How then this noiſe came 'to ſtrike her as one of thoſe circumſtances which made her cer-'tain that the purſuers were indecent together? depones, Becauſe 'ſhe felt Miſs Woods put down her hand juſt before ſhe heard it.'

This being no anſwer, 'Interrogated, and *the queſtion repeated*, State, p. 83. A.
'How the noiſe came to ſtrike her as one of the circumſtances 'that made her certain they were indecent? *After long ſilence*, the 'witneſs made *no other anſwer* than repeating what ſhe had already 'ſaid.'

Your Lordſhips will judge of ſuch a ſtatement, given upon ſolemn oath. It is not at all difficult to ſee what the witneſs really *wiſhed* to make the Court believe. She had read or heard, that in venereal intercourſe, natural or unnatural, there might be a certain ſort of noiſe. But ſhe had got beyond her depth, and having no real fact to guide her, ſhe deſcribes what is abſolute nonſenſe, and totally inconſiſtent with any reality. But look at the deliberate and confeſſed invention by which ſhe attempted to ſupport the ſtory. In the firſt day's examination ſhe was quite prepared with a *ready* anſwer to the queſtion. She anſwered *at once*, that putting one's finger into the neck of a wet bottle is the *likeſt* deſcription, &c. That this was *pure invention*, ſhe afterwards expreſsly *confeſſed*, and your Lordſhips may eaſily aſcertain. And then, thinking herſelf aſſiſted by the other likeneſſes put by the Judge, ſhe likened it to a thing *ſo totally different*, as to demonſtrate, that ſhe was not ſpeaking of any reality, but was merely *guessing* at ſomething which ſhe thought might attach criminality to the petitioners. But here alſo there was a total failure. It was like a maid patting butter, and *ſo loud that ſhe heard it in the holidays though in a ſeparate bed.* This reſembles nothing in nature, and nothing of the ſort which ſhe evidently wiſhed to deſcribe. But then, how did ſhe come to know that this noiſe, in whatever way deſcribed, indicated the unnatural act which ſhe had expreſsly inferred from it? This was a queſtion for which ſhe was quite unprepared; and accordingly ſhe had no anſwer to give to it; but after ſitting for ten minutes in dead ſilence, ſhe repeated her firſt anſwer, that it was becauſe ſhe felt Miſs Woods put down her hand juſt before ſhe heard it.

This was no anſwer. It aſſigned no reaſon for her thinking that the noiſe indicated lewdneſs. It was, beſides, totally inconſiſtent with her whole ſtory of the poſition and circumſtances. as ſhe was afterwards obliged to deſcribe them: Indeed, it turned out at laſt, that ſhe never felt their hands at all.

But utterly abſurd as this ſtory was, if there had been any truth in it, it would have been natural to expect, that, with the importance ſhe attached to it, it ſhould at leaſt have made a prominent part of her ſtory at firſt. And yet, to the amazement of the petitioners, the witneſs herſelf, Interrogated, When and to whom ‘ at the ſchool ſhe firſt mentioned this circumſtance of the noiſe ‘ ſhe had heard like a finger in a bottle? depones, *She does not ‘ think ſhe mentioned it to any one at ſchool?*’ and ſhe particularly ſwears, that *ſhe did not tell it to Miss Munro, though ſhe ſpoke to her the very next day before breakfaſt.* It is humbly thought, that when this is connected with the whole account of the noiſe put together, it is demonſtration that the whole was a very ill managed attempt to fix upon a preciſe fact indicative of criminality, but in itſelf juſt a groſs and deliberate falſehood. And, though it ſeemed to be thought that this matter of the noiſe might be thrown out of the caſe altogether, it is humbly ſubmitted that this is impoſſible. Theſe prominent features in Miſs Cumming's ſtory cannot go for nothing, but muſt remain as landmarks to guide your Lordſhips to the true ſource of the evil.

State, p. 83. B

—— p. 87. G.

The moſt remarkable circumſtance next to the noiſe, from which Miſs Cumming deduced her certainty of criminality, is the fact alleged, that Miſs Cumming felt both the petitioners put down their hands and pull up their ſhifts. And it is indeed of importance to ſee how this fact or allegation is dealt with, as to the particular circumſtances attending it.

‘ Interrogated, As it was dark at the time, in what manner did ‘ ſhe feel them both put down their hands and pull up their ‘ ſhifts?’ It is impoſſible that a plainer queſtion could be aſked; and, with ſubmiſſion, if the fact was not abſolutely falſe, Miſs Cumming *muſt* have been able to anſwer it *inſtantly*. The fact had been aſſerted, at leaſt as to Miſs Pirie, in all the previous proceedings; and Miſs Cumming muſt have had a preciſe notion concerning the manner of it, if there was the leaſt truth in it. But your Lordſhips will particularly obſerve, *that ſhe was quite aware of this.* She ſaw the neceſſity of the manner being ſpecified. She did *not* anſwer here, that *ſhe did not remember*, or *that ſhe was not ſure.* Nothing like it. Then how did ſhe deal with the

the queſtion? *She ſat in profound ſilence for nearly a quarter of an hour*, during which the Court were taking all poſſible pains to explain, if it had been neceſſary, the preciſe object of the queſtion. Then why was ſhe ſilent? For no conceivable reaſon, but becauſe the queſtion came on her unexpectedly, and *ſhe had not yet* CONTRIVED *the manner* in which ſhe was to repreſent the fact. That this was the operation of her mind was evident at the time; and it turned out, that, like other ſuch contrivances, it led to a detection of the moſt deciſive nature. 'Interrogated. As it was 'dark at the time, in what manner did ſhe feel them both put down 'their hands and pull up their ſhifts? *After long ſilence*, and *be-* 'ing repeatedly queſtioned, the witneſs anſwered, *With her leg*. In- 'terrogated, If, with her leg, ſhe felt both their hands? depones, 'She did not feel their hands. Interrogated, How then ſhe felt 'them take up both their ſhifts? depones, She was *lying quite cloſe* 'to them, and *felt quite well* when they took up their ſhifts. Inter- 'rogated, Did ſhe diſtinctly feel them put down *both* their hands? 'depones, That her own arm was covered, and ſhe did not feel 'their hands, but felt *them move their arms downwards*, and *with* 'her leg ſhe felt *their naked legs*, and ſhe FELT NOTHING NAKED 'HIGHER UP THAN THEIR LEGS. Interrogated by Lord Meadow- 'bank, Whether ſhe is poſitive ſhe felt the right arm of the one 'and the left of the other both moved down in order to lift up 'their ſhifts? depones, That *ſhe is not poſitive* they did both move 'down their arms, but is poſitive they both lifted up their ſhifts, 'becauſe *afterwards* ſhe felt *both their naked legs* with *her leg*, but 'ſhe felt *no other part of their bodies naked*, becauſe her own was 'covered. Interrogated If ſhe had drawn up her own ſhift, ſince 'her own leg was naked? depones, She had not, *but it had got* 'up.'

See p. 83. B, C, D, E.

This is the firſt account given after a quarter of an hour's reflection. There are not a few contradictions even in that ſhort ſpace. Firſt ſhe felt both their arms move downwards: then ſhe is not poſitive that both were moved downwards. Firſt ſhe felt their arms moved downwards, and then felt their naked legs: Then ſhe is only poſitive that they lifted up their ſhifts, *becauſe afterwards* ſhe felt both their naked legs. So that having at firſt reſted on the moving of the arms, the fact was at laſt made to depend *exclusively* on her feeling with her leg. But, leaving theſe matters, it is clear that ſhe fixed her certainty of having felt with *her leg* both the *naked* LEGS of the petitioners, and ſwore in the moſt pointed terms that ſhe felt *nothing naked above their legs*.

This

This appearing to be fixed, according to the plain meaning of the words uſed, the direction of the examination was changed to different points; but at the very end of the examination of that day, a fact came out rather of ſome conſequence to have been omitted upon ſuch a ſtatement, but mentioned in reference to a different part of the depoſition. 'And with reference to what is deponed 'to on page 59. lines 29 and 30, depones, That ſhe further recol. 'lects, that when Miſs Woods came into bed, Miſs Pirie moved 'her leg over towards the witneſs, and *that Miss Pirie had on her* '*ſtockings that night.*'

The examination of the next day, began with endeavouring to aſcertain the circumſtances about the ſtockings, and Miſs Pirie moving her leg over when Miſs Woods came in. It appeared that it was the ſame night, the laſt occaſion. 'Interrogated, 'How did you know that Miſs Pirie had on her ſtockings, 'that night? depones, She felt her ſtockings. Interrogated 'How, or in what manner did you feel her ſtockings? depones, 'With her foot and part of her leg. Interrogated, Did you feel 'Miſs Pirie's ſtockings with both your feet? depones, No. In-'terrogated, Which foot? depones, Her left. Interrogated, How 'did you come to feel Miſs Pirie's ſtockings with your left foot? 'depones, Becauſe ſhe was lying on Miſs Pirie's right ſide, and '*when Miss Woods came in*, Miſs Pirie moved over her leg to-'wards the witneſs.'

State, p. 85. E, F.

All this inquiry went on without any more particular reference to the ſtory about feeling Miſs Pirie's naked legs. It would appear that Miſs Cumming had forgot it; and it is certain ſhe made no propoſal for correcting or adding to that ſtatement. And the witneſs 'Interrogated, Had Miſs Woods her ſtockings on upon 'that night when Miſs Pirie had her ſtockings on? depones, *She* '*does not know*, and ſhe rather thinks not; becauſe none of the 'girls ever ſaid they ſaw Miſs Woods with her ſtockings on.'

—— H.

The petitioners muſt here recall to the attention of the Court, and particularly bring under the notice of thoſe of your Lordſhips who were not preſent, what took place about this ſtage of the proceedings. It appeared to the petitioners' counſel, that Miſs Cumming had now brought herſelf into a direct and flagrant contradiction. They ſtated, that ſhe had firſt ſworn that ſhe had felt the petitioners pull up their ſhifts, and that ſhe was certain of this, by having felt their naked legs with her leg. She had poſitively ſworn, that ſhe had felt no part of their bodies naked above their legs. It had now come out, that Miſs Pirie had on ſtock-

ings

ings that night, and that the witneſs was not certain whether Miſs Woods had not alſo her ſtockings on; and her *only* reaſon for thinking not was, that the other ſcholars had not ſaid they ſaw them. So that ſhe had now ſworn that ſhe felt their naked legs and nothing above; and yet the one had certainly ſtockings on, and ſhe did not know whether the other had or not! Your Lordſhips muſt recollect, that when you ſaw the direct contradiction, and the defender's counſel felt it, your Lordſhips were about to make an immediate farther inquiry of the witneſs, when the defender's counſel interfered, and moved that the witneſs might be withdrawn. Then your Lordſhips had an anxious attempt to explain it. But, in the mean time, the witneſs having perceived the contradiction, had had time to renew her invention, and to attempt to amend her firſt ſtory. And the following is the amendment: 'Interrogated, When ſhe mentions ſhe felt nothing naked 'higher up than the purſuer's legs, what part of the body ſhe 'meant by their legs? depones, That ſhe *cannot ſay how high up 'ſhe felt their legs* naked, but that ſhe is certain ſhe felt their ſkin, 'and it was with the upper part of her own leg, and the under 'part of her thigh, *about the knee*, that ſhe ſo felt it.' And ſhe again depones, 'That ſhe *cannot tell what part* of their legs ſhe 'felt naked, but ſhe is *certain it was above Miss Pirie's knee*, al- 'though ſhe is *not certain what part of Miss Woods' leg ſhe felt*.' State, p. 88. F.

Now, recollecting that ſhe had told the whole ſtory about the legs, without once mentioning the ſtockings, and recollecting alſo her certainty about Miſs Pirie having ſtockings, and her uncertainty about Miſs Woods having ſtockings: the meaning and form of her correction are too groſs to miſlead any body. She now *cannot tell what part* of their legs ſhe felt; only ſhe is *ſure* it was above *Miss Pirie's* knee, and ſhe is *not ſure* whether it was above *Miss Woods'* knee or not. What ſhe is truly certain of is, that her feeling muſt be made *to fit* with what ſhe has before ſworn in regard to the ſtockings.

But ſhe had hardly got out of this ſcrape, however clumſily, when ſhe found herſelf in another, from which all her ingenuity never did extricate her. 'Interrogated, Whether, when Miſs 'Woods came into bed, and ſhe *felt Miss Pirie move out her leg to- 'wards the witness* as above deponed to, Miſs Woods was lying '*between* Miſs Pirie's legs? depones, *She does not know*. Inter- 'rogated, When ſhe felt the leg both of Miſs Pirie and Miſs 'Woods, was the one leg lying directly above the other? de- 'pones, No; they *were not* when ſhe felt them. Interrogated, —— p. 88. G, H, I. —— p. 89. A.

'How then were the two legs lying? depones, That she is *inclined to think that Miss Woods' leg was lying within Miss Pirie's.* Interrogated, Whether then she put her leg over Miss Pirie's, so as to feel Miss Woods's? depones, She did not; but she is quite sure she felt both legs. Interrogated, *In what manner was her own leg lying when she felt both their legs?* depones, She does not remember; but she THINKS SHE WAS LYING HALF-TURNED ON HER RIGHT SIDE, WITH HER BACK TOWARDS THEM.'

Perhaps the defender thinks it of little consequence, that Miss Cumming has here said that she is inclined to think Miss Woods was *within Miss Pirie's legs*, and yet afterwards retracts it in express words; and has also sworn positively the one leg *was not* directly above the other, and as positively retracts this. But as she was absolutely forced to retract both by the course of the cross examination, the petitioners apprehend, that it is just another direct proof that there was no reality at all in the fact averred. But your Lordships will be pleased to attend to the position in which she at last places herself. She had sworn in her *second* edition of the story, that 'it was with the upper part of her own leg, and the under part of her thigh, *about the knee*,' that she felt the naked legs. And now she tells your Lordships, that she was *half turned on her right side*, with *her back towards them*, and *her knee consequently the farthest removed from them*; and yet she in this position felt *with her knee*, not only Miss Pirie's legs, but Miss Woods' legs within Miss Pirie's. The defender may believe this if she can; but it is a manifest impossibility: and *to the end, this remains Miss Cumming's position when she felt the legs!*

But the confusion and contradiction did not stop here. She had sworn that, *when Miss Woods came into bed*, Miss Pirie put out her leg. But a suspicion crept across her mind, that this would not do, after the position in which she had now placed herself; and therefore, 'depones, That when Miss Woods came into the bed at first, she lay down above Miss Pirie, and then they took up their shifts, and *it was after that*, that Miss Pirie moved over her leg towards the witness. Interrogated, How their legs were lying with respect to each other, after they had taken up their shifts, and before Miss Pirie laid her leg out? depones, She cannot say; but she is sure that she felt both their legs. Interrogated, At what particular moment it was that she felt Miss Woods' leg? depones, It was just at the time that they took up their shifts, and it was then that she felt their skins. Interrogated, and desired to describe exactly, how they were lying when the witness felt Miss Woods' leg? depones, *That Miss Woods was lying directly above Miss Pirie.*' Here your Lordships

State, p. 89. B, C.

see,

ſee, that, *without intending it, or being aware of it*, the witneſs flatly contradicted her previous ſtatement, that Miſs Woods was *within Miss Pirie's legs*. Then follows another direct contradiction. ‘ Interrogated, Was her (Miſs Woods's) leg directly above Miſs ‘ Pirie's; or how was it lying? depones, That ſhe felt *all* Miſs ‘ Pirie's leg, but only a part of Miſs Woods'; and ſhe thinks it ‘ was *above the knee*. Interrogated, Was it only above the knee ‘ that ſhe felt Miſs Woods' leg? depones, *That it was above the ‘ knee that ſhe felt it;* and ſhe does not think ſhe felt any more.’ Recollect that ſhe had before expreſsly ſaid, ‘ That ſhe *cannot tell ‘ what part* of their legs ſhe felt naked, but ſhe is *certain* it was ‘ *above Miss Pirie's knee*, although ſhe *is not certain* what part of ‘ Miſs Woods' leg ſhe felt.’ And yet ſhe now felt *all* Miſs Pirie's leg together, and ſhe *is* certain that it was *above Miss Woods's knee!* State, p. 89. D.

But ſtill farther, ‘ Interrogated, Did the witneſs feel any other ‘ part of Miſs Woods' leg than ſhe has juſt mentioned, at any time ‘ after they pulled up their ſhifts? depones, That ſhe did not, be- ‘ cauſe *immediately afterwards, ſhe lay as far from them as ſhe could, ‘ and ſhe felt no more* of them, till after ſhe had aſked Miſs Pirie ‘ what was ſhaking the bed; and when Miſs Pirie anſwered, ‘ No- “ thing,’ ſhe then drew up her leg, and touched the witneſs.’ And yet ſhe had juſt before ſaid, that it was after they had pulled up their ſhifts, that ſhe felt Miſs Pirie put out her leg, which, from the deſcription, muſt have been *half an hour* before ſhe ſpoke! —— p. 89. E, F.

There thus remained upon the face of the depoſition, a manifeſt impoſſibility of its being true. In whatever way Miſs Cumming deſcribed it, though ſhe had turned it in all the ways that could be imagined, it was manifeſtly impoſſible that ſhe could feel the legs of the petitioners in the ſituation in which ſhe placed herſelf. The defender's counſel felt ſtrongly this impoſſibility; and your Lordſhips will recollect the ingenious attempt to make your Lordſhips think, that ſhe might have felt Miſs Woods' leg *under* that of Miſs Pirie. But Miſs Cumming's knowledge of the ſubject did not reach to this, and the hypotheſis was completely finiſhed, when Miſs Cumming was called in and examined: ‘ In- ‘ terrogated, Does the witneſs ſtill incline to think that Miſs ‘ Woods' leg was *within Miss Pirie's* when ſhe felt them both? de- ‘ pones, *She does not*. Interrogated, Did ſhe feel any part of Miſs ‘ Woods leg below Miſs Pirie's leg; or was what ſhe felt of Miſs ‘ Woods' leg above Miſs Pirie's leg? depones, She thought *the ‘ one which was below was Miss Pirie's leg*, and that the one which ‘ was above was Miſs Woods'. Interrogated, If at any time ſhe

‘ ſtretched

'ſtretched out her leg or foot, ſo as to put any part of either un-
'der Miſs Pirie's? deponeſ, *She does not remember that she did.*'

And thus the whole matter remains completely unexplained and inexplicable. Now, look back to the commencement of the inquiry, when the witneſs was the day before aſked the ſimple queſtion, in what manner ſhe felt the petitioners pull up their ſhifts. A profound ſilence enſued. The queſtion frequently repeated, and no anſwer given. At laſt comes the anſwer, With her leg; the ſtockings altogether concealed. The ſtockings coming out, ſhe, after getting time to reflect, ſays it was above Miſs Pirie's knee, and ſhe does not know what part of Miſs Woods ſhe felt, but ſhe felt them with the upper part of her leg, and the under part of her thigh about the knee; and at laſt, after getting into abſolute confuſion, aſſerting a fact one moment, and retracting it the next, ſhe leaves the fact to ſtand thus: That ſhe felt them pull up their ſhifts, *becauſe* ſhe felt their legs naked; and ſhe felt *both their legs naked above the knee*, with *her own knee*, while ſhe was lying upon her right ſide *with her back to the petitioners!*

But even this does not complete the evidence of abſolute falſehood in this aſſertion about lifting up the ſhifts. For your Lordſhips will now be pleaſed to recollect the important fact, which at laſt came out at the very end of the *next day's* examination. All this time that your Lordſhips were attempting to inveſtigate the matter on the ſuppoſition that there was nothing but a ſhift in the way, Miſs Cumming knew that Miſs Pirie had not only her ſtockings on, but *a petticoat*, and *a wrapper* which covered her whole body. Throughout the whole of it, theſe were never mentioned. Nothing but the ſhifts pulled up. But the petitioners humbly take it to be nothing leſs than direct evidence of a deliberate falſehood, that even an attempt was made to deſcribe the occurrence, without mentioning the bedgown and petticoat. It is, with ſubmiſſion, quite impoſſible that any perſon could have told the ſtory at all, if it had been true, without mentioning theſe coverings, which were evidently more immediately under Miſs Cumming's obſervation, than the ſhift could poſſibly be. And why were they not mentioned? Your Lordſhips ſee that they increaſe the improbability tenfold, and in truth render the whole ſtory abſurd. If two women were laid flat above one another with long ſhifts, it was truly obſerved to be a phyſical impoſſibility, that they could pull up their ſhifts without altering their poſition. But, if one of them had, beſides her ſhift, a petticoat and a wrapper faſtened round her, it is in vain to ſpeak of it as a thing which any ingenuity would render practicable. And beſides, the

wrapper

wrapper and petticoat alone, laid aſide or drawn up in any way, would have come betweeen Miſs Cumming and Miſs Pirie, and again rendered it impoſſible for her to feel the naked legs.

Still once more: if any thing be wanting to reſolve this matter beyond controverſy, your Lordſhips have the remarkable fact, that Miſs Cumming *never mentioned any ſuch thing to Miss Munro*, or Miſs Stirling, or any other perſon in the ſchool. Miſs Cumming, interrogated in relation to her converſation with Miſs Munro the *next morning*, 'Did ſhe mention the circumſtance of their pulling 'up their ſhifts? depones, That *ſhe does not remember*.' But Miſs Munro ſays nothing of any ſuch fact being told her; and Miſs Stirling as little; ſo that your Lordſhips have it now before you, juſt as groſs and palpable an invention as it is poſſible to conceive—attempted to be ſuſtained by concealment, and prevarication of the moſt lamentable nature, and at laſt left in a ſtate of the moſt concluſive detection. It is in vain to ſay, that ſhe might remember the fact without remembering the manner. The manner was inſeparable from the fact in ſuch a caſe. Beſides this, her own *ſilence at firſt* ſhews her conſciouſneſs of this, while the concealment *firſt* of the ſtockings, and *then* of the wrapper and petticoat, demonſtrate the diſingenuous intention to an abſolute certainty. State, p. 87. H.

Having thus, as the petitioners humbly truſt, proved the falſehood of Miſs Cumming's account of the material facts upon this fifth occaſion, the petitioners would be glad to aſk what ground there is for believing one word that ſhe has ſaid upon the ſubject? There are no conſequences, ſuch as might be expected, to give her the leaſt ſupport. For, 'interrogated by the Lord Juſtice-Clerk, 'Whether, upon any of the occaſions, when the purſuers were in 'bed together, as above deponed to, ſhe felt any thing wet in the 'bed? depones, *She did not*. Interrogated, If the next morning 'after theſe occaſions, ſhe ever perceived any ſtain upon the 'ſheets? depones, *She did not*.' Neither is the deſcription given by her in itſelf at all conſiſtent with ſuch an intercourſe as that which ſhe means to deſcribe. For Miſs Pirie is repreſented as the party who was moſt anxious for the indulgence of this abominable propenſity; and though Miſs Cumming in her *general* ſtatements ſpoke of the petitioners breathing high, and reſted much on it, yet, 'Interrogated, Was Miſs Pirie breathing high on any 'of the five occaſions? depones, *She does not think it*. Interrogated, Are you ſure that ſhe was not breathing high? depones, She 'cannot be certain, but *ſhe does not think ſo*.' From this it appears,

pears, that Miſs Cumming had been exerciſing her invention on a ſubject of which ſhe had but a very imperfect idea. For though Miſs Pirie is made to be the party gratified, and *exclusively* gratified, yet all the high breathing is given to Miſs Woods. And it is another proof of the effect of Miſs Cumming's inſtructions to Miſs Munro, that the very ſame abſurdity, though the parties are reverſed, is made to take place in Miſs Woods's bed.

Now, with great ſubmiſſion, if it be made out that Miſs Cumming has ſworn falſely, and cannot be believed, it is ſurely of no conſequence that *ſhe ſays* the petitioners lay above one another, that there was a great deal of kiſſing and ſhaking the bed, &c. or that ſhe reports converſations which nobody elſe heard. Theſe are things in which the petitioners had ſcarcely a chance of detecting her, although, in fact, they have detected her in at leaſt two of the converſations. The petitioners can do no more but ſtate, that having detected her in ſo many particulars, having diſcovered the malice and falſe purpoſe throughout, they are entitled to throw down her teſtimony altogether, and then draw the concluſion neceſſarily ariſing.

But it was ſaid, that the petitioners had admitted facts which ſupported her. Now, with humble deference, the petitioners trust your Lordſhips will reconſider that matter, and reflect upon the juſtice of the caſe between them and Miſs Cumming. The petitioners readily explained whatever they could recollect, which could be the groundwork or pretence on which Miſs Cumming has raiſed this infamous ſtory. But, with ſubmiſſion, if the ſtatement of the witneſs cannot be believed, the petitioners ought to have credit for their openneſs, and their admiſſions ought to be taken as they are given, and judged of upon the facts actually connected with them. Inſtead of ſupporting Miſs Cumming's ſtatement, they at once ſhew the fairneſs of the petitioners, and totally deſtroy the whole hypotheſis of the defender.

The petitioners had ſtated generally, that from the time that Miſs Woods ſupped in her aunt's room, it naturally happened, that when ſhe was later up than Miſs Pirie, that ſhe paſſed through Miſs Pirie's room in going to her own, and that ſometimes ſome converſation paſſed between them on theſe occaſions, of the particulars of which they have no recollection. But, in anſwer to the 4th article of the condeſcendence, the petitioners ſtated an incident which they did recollect, and which they ſuppoſed might be the groundwork of that which turns out to be Miſs Cumming's laſt and main occaſion,—in ſubſtance, that Miſs Woods having had a difference with her

her aunt, had ſat up with her till day broke before they were aware; that Miſs Pirie's room, being divided from Mrs Woods's by a lath partition of two inches, Miſs Pirie had been kept awake; that as Miſs Woods paſſed through the room, Miſs Pirie called to her and after ſome converſation, in which they were both much moved, and Miſs Pirie urged Miſs Woods to tell her the cauſe of her diſpute with her aunt, it was believed, Miſs Pirie being in great agitation, might have kiſſed Miſs Woods's cheek; that before Miſs Woods went away, Miſs Pirie being afflicted with the rheumatiſm, aiked Miſs Woods to rub her back a little, which ſhe did; that in the mean time, Miſs Cumming ſtarted up, and jumped out of bed; and that afterwards Miſs Woods went away.

Now, your Lordſhips will be pleaſed to obſerve, that there are ſeveral of the material parts of this ſtatement, and parts *exclusive of Miss Cumming's story*, which are now proved to be undeniable facts: 1. The general fact, that Miſs Woods ſupped with her aunt, is clearly proved: 2. Mrs Woods, after mentioning the quarrel about the end of Auguſt, and that Miſs Woods conſtantly ſupped with her after that time, expreſsly depones, 'That ſoon after this State, p. 124. H.
'quarrel, and at night, when Miſs Woods was in the witneſs's
'room, the witneſs and ſhe *had a difference*, in conſequence of
'which they continued together much longer than either of them
'was aware of, *and* DAY BROKE *before they parted*.' Here is evidence, that upon a certain night ſubſequent to the end of Auguſt, though Mrs Woods was not ſure how long there was a difference between her and Miſs Woods, in conſequence of which the latter ſat with her till the unſeaſonable hour of day break in September: Then, 3. Mrs Woods depones, 'That when Miſs Woods ſupped
'with the witneſs, ſhe was *always in her day dress*, as far as the
'witneſs recollects, *and she was so on the above occasion*.'

When, therefore, your Lordſhips conſider the admiſſions of the petitioners you muſt take them along with theſe facts, which accord with the real nature of the interview as deſcribed by them, but are utterly inconſiſtent with Miſs Cumming's fable. The leading features of the one account are proved unexceptionably, and they are totally inconſiſtent with the truth of the other. There was a real cauſe which brought Miſs Woods into the room at that unſeaſonable hour: There was a real cauſe which kept Miſs Pirie awake: There was a real cauſe which led her to ſpeak to Miſs Woods: There was a natural cauſe to account for words of perſuaſion, and acts of ſtrong emotion: And all this time it is a proved fact, that *Miss Woods was in her day dress*. Now, add to theſe facts,

facts, 4. That Miſs Pirie was afflicted with the rheumatiſm, and was in the habit of having her back rubbed for it. Mrs General
State, p.134. H. Campbell ſays expreſsly, 'During Miſs Pirie's reſidence with me, 'ſhe was afflicted with *rheumatism in her limbs and back*, and was 'frequently rubbed for it.' Miſs Cumming herſelf admits the
—— p. 89. H, I.; p. 90. A. rheumatiſm, though ſhe tries to diſguiſe it. She depones, 'ſhe had 'the rheumatiſm in her arms. Interrogated, Did the rheuma- 'tiſms affect Miſs Pirie's back? depones, She never heard her ſay 'ſo. Interrogated, Whether Miſs Pirie uſed to have any part of 'her body rubbed for the rheumatiſm? depones, She does not 'know; but once when Miſs Stirling was ill, and got ſomething 'from the doctor to rub her back with, Miſs Pirie ſaid ſhe had 'got a pain in her back alſo, *and asked her for some of the same 'stuff*, but ſhe does not know of her being rubbed with it.' Char-
—— p. 105. H. lotte, the maid, 'Interrogated, depones, She knows Miſs Pirie had 'a pain in her back while ſhe was in their ſervice, *for she has been*
—— p. 52. B. '*employed to rub it.*' Now, Miſs Munro depones, 'That ſhe re- 'members, upon another occaſion, Miſs Pirie coming to Miſs Woods 'and ſitting down upon the bed-ſide, juſt after Miſs Woods had 'gone to bed: That Miſs Woods was then ill, *and Miss Pirie 'rubbed her back for a little.*' Thus, your Lordſhips have at once the fact of Miſs Pirie being ſubject to rheumatiſm, the fact of her back being rubbed for it at this very time, and the fact that ſhe had performed the very ſame office for Miſs Woods, in circumſtances exactly ſimilar to thoſe in which the petitioners ſtated that Miſs Woods had rubbed Miſs Pirie's back.

When all theſe things are conſidered, it is apprehended that the petitioners have proved all the material parts of *their* ſtatement, in ſo far as they were capable of proof. And, with ſubmiſſion, they are perfectly rational, and conſiſtent with the pureſt innocence. It is perfectly natural that the petitioners ſhould have wiſhed not to awaken the ladies in the room; and it is equally natural that they ſhould not have wiſhed to enter into an explanation with Miſs Cumming, which neceſſarily involved the fact of Miſs Woods having ſat up to ſo late an hour, her quarrel with her aunt, and the differences between the petitioners themſelves. A defect in the ſtatement was remarked, that no account was given of what made Miſs Cumming jump out of bed, or how the matter ended. The truth is, that this had been at firſt withheld by the petitioners from mere delicacy; and they did not ſee the Anſwers to the Condeſcendence till after they were given in. But they remarked the inaccuracy or defect, and, before any proof was taken, furniſh-

ed their counſel with a copy of the paper, in which it was marked on the margin, that Miſs Cumming having ſtarted as from her ſleep. jumped out of bed for the purpoſe, or on the pretence of a neceſſary occaſion, and having got out at the foot of the bed, went round to the ſide, and afterwards went in by that ſide, climbing over Miſs Pirie. It was perhaps ſcarcely worth while to trouble your Lordſhips with this explanation; but it is the fact, and the petitioners' counſel ſaw it ſo ſtated before one word of proof was taken.

Now, the petitioners think it will appear to your Lordſhips, that what are repreſented as admiſſions by the petitioners are in reality explanations of an occurrence which undoubtedly took place, and ſerve to reſolve the truth of the caſe. Your Lordſhips have only to contraſt theſe ſimple and natural circumſtances with the abſurdity of the ſtory told by Miſs Cumming, involved as it is in manifold contradictions and plain falſehoods, remembering always, that it is a fact proved, that Miſs Woods was in her day dreſs.—And the petitioners truſt they have now ſaid enough upon Miſs Cumming's five occaſions.

But Miſs Cumming's depoſition contains ſtatements of a different nature, to which it is very important to attend. The petitioners allude to her alleged converſations with Charlotte the maid, and the incidents which are ſaid to have followed her firſt diſcloſure to Miſs Munro.

It will be recollected, that in the Statement there was the following paſſage, adopted into the Condeſcendence: 'The morning after Miſs M— was firſt diſturbed, as before related, ſhe roſe earlier than uſual, and was firſt in the ſchool-room. The maid alluded to was doing up the room, to whom Miſs M— ſaid that ſhe had ſlept ill, and had a dreadful night. *The maid underſtood her at once*, and ſaid laughing, 'It is a pity they cannot get a man, but that they will never get.' *Two or three of the eldeſt girls came down* ſoon after, and *all joined in ſpeaking of what had happened.* The maid informed *them*, that one day, going to ſeek for ſomething wanted for the houſe, ſhe found both the drawing-room doors locked, and, *looking through the* KEY-HOLE, *ſhe ſaw Miſs Woods and Miſs Pirie lying on the* SOFA *in an improper manner.*' The petitioners pray your Lordſhips to remark, that, whether this is a true ſtatement or not, it is a ſtatement which had been made in every ſtep of the proceedings before the proof, and which inſeparably connects the alleged aſſertion of the maid, that having found *both doors locked*, ſhe looked *through* Stat. p. 6. H. 7. A, B.

the

the key-hole, with the other aſſertion, that ſhe *then* and *thereby* ſaw them *upon the ſofa*. It will preſently appear that Miſs Munro told the ſtory in the ſame form. But the petitioners entreat the attention of your Lordſhips to the point; for if they are not much miſtaken, it will come out, that the whole originates with Miſs Cumming.

Your Lordſhips recollect, that the impoſſibility of ſeeing the ſofa through the key-hole was aſcertained at the viſitation, and thus the aſſertion, from whomſoever it came, was detected as a falſehood; but the key-hole and the ſofa had uniformly gone together in all the previous ſtatements; and Miſs Munro had kept them together in her depoſition: The maid ſaid, 'That one day, wanting 'ſomething for the family, ſhe had gone to the drawing-room, and, 'upon looking through the key-hole, she had seen them together in an 'improper ſituation *upon the ſofa: That ſhe had called through the 'door that ſhe wanted ſomething*,' &c. Miſs Stirling reports nearly the ſame. Hitherto no attempt had been made to ſtate the matter in any other way.

State, p. 48. A, B.

But the phyſical impoſſibility being detected, it is truly curious to ſee how the genius of Miſs Cumming manages the matter. After mentioning her communication to Miſs Munro in the morning, ſhe ſays, in the direct examination: 'And when they came in 'from their walk in the ſame day, Miſs Munro and ſhe were talking of it in the ſchool-room, and the maid Charlotte came in, 'and the witneſs told Miſs Munro to hold her tongue, and Charlotte ſaid, 'O you need not, it is long ſince I have known it:' 'That ſhe had *ſeen them lying on the ſofa as ſhe went up ſtairs to the 'drawing-room*; and *another* day ſhe went to the drawing-room, 'and went to both the doors, but they were both locked, and Miſs 'Pirie ſaid, 'Who's there;' and Charlotte ſaid, 'It is me,' and 'Miſs Pirie ſaid, 'What do you want?' and Charlotte replied, "I want to get in;' That Miſs Pirie ſaid, 'You muſt come back "again; we are buſy juſt now;' and Charlotte ſaid, *ſhe ſaw them 'quite well what they were doing*.'

—— p. 72. B, C, D.

Here the witneſs, in the firſt place, *ſuppreſſed the key-hole altogether*; and then ſhe invented a new ſtory, to render the idea of ſeeing them on the ſofa barely poſſible. She now connected the ſofa with the ſuppoſition of Charlotte ſeeing them from the outer ſtair, and ſhe evaded all explanation as to the mode of ſeeing them on the occaſion when both the doors were locked. It will be matter of ſerious inquiry, Whether the whole of the firſt part of this ſtatement does not moſt clearly appear to be a deliberate falſehood.

But

But it may firſt be proper to proceed to ſee how the matter comes out on the croſs examination.

On a ſpecial interrogatory by the Court, in what manner Charlotte ſaid ſhe ſaw them, on the occaſion when both doors were locked, ſhe depones, 'That ſhe ſaid ſhe had ſeen them through 'the key-hole. And being interrogated for the purſuers. Why 'did you not tell that Charlotte had ſeen them through the key-'hole, when you were laſt examined? depones, *She forgot, and ſhe 'thought ſhe would be asked again.*' This anſwer being juſt a contradiction in terms, may be left without remark. She forgot it, and yet ſhe was thinking of it at the time! And the petitioners may leave your Lordſhips alſo to judge of the truth of her pretended ignorance as to whether there were key-holes or not. But the petitioners muſt trouble your Lordſhips with the examination as to the particulars of the *two* ſtories which had thus *for the first time* been raiſed up. It furniſhes a moſt ſingular commentary upon the whole of this cauſe. 'Interrogated, and deſired to ex- State, p. 75. D —— p. 75. F. G, H. ; and 76. A, B, C, D. 'plain more particularly what Charlotte ſaid with reſpect to look-'ing through the key-hole of the drawing-room door? depones, 'That Charlotte ſaid *nothing more particular* than that ſhe had *ſeen 'them quite well through the key-hole.* Interrogated. Did Charlotte 'tell you that ſtory about the key-hole more than once? depones, 'That ſhe *does not remember.* Interrogated by the Lord Juſtice-'Clerk, When Charlotte told her ſhe ſaw them through the key-'hole, did ſhe tell her that they were *lying on the ſofa?* depones, 'THAT SHE DID NOT. Interrogated for the purſuers, Are you 'perfectly certain that Charlotte told you the ſtory even once? 'depones, She is quite certain. Interrogated, When did ſhe tell 'you? depones, *She does not remember*, but it was after Miſs Mun-'ro came to the ſchool, and that it was after Miſs Munro 'and ſhe had talked about the matter. Interrogated, Do you 'remember the day of the week when Charlotte told you the 'ſtory? depones, She *does not.* Interrogated, At what time of the 'day was it? depones, *She does not remember.* Interrogated, Was 'it before or after dinner? depones, *She does not remember.* In-'terrogated, Who was preſent when Charlotte told the ſtory? de-'pones, *She does not remember if there was* ANY *perſon preſent.* 'Specially interrogated, Was Miſs Munro preſent? depones, *She 'does not remember.* Interrogated, Did you aſk Charlotte any 'queſtions about the ſtory? depones, *She does not think it.* Inter-'rogated, Did Charlotte tell you what ſhe ſaw through the key-'hole? depones, *No, ſhe juſt ſaid ſhe ſaw them.* Interrogated, 'Did ſhe tell you what they were doing? depones, That ſhe had

'been

' been talking to Charlotte about it, but does not remember what
' ſhe ſaid, and Charlotte ſaid, *She ſaw them through the key-hole.*'

Here your Lordſhips will remark, 1. That the witneſs had before ſworn, that it was upon the day when ſhe and Miſs Munro came in from their walk, that Charlotte made this communication in the preſence of her and Miſs Munro; and yet ſhe now will not remember any thing, either of the time, place, or perſons preſent, or any thing whatever connected with it. 2. That though the whole point of the ſtory had hitherto depended on the ſuppoſed aſſertion of Charlotte, that after finding both doors locked, ſhe ſaw them through the key-hole *upon the ſofa*, yet Miſs Cumming now ſwears peremptorily that Charlotte did *not* ſay ſhe ſaw them through the key-hole on the ſofa. 3. That though this ſtory has been told and re-told, for the purpoſe of fixing criminality upon the petitioners, Miſs Cumming at laſt ſwears, that Charlotte did not utter one word which could have that tendency, nor any thing whatever but *the ſimple impoſſibility* that ſhe ſaw them through a key-hole which did not exiſt. Your Lordſhips will remark alſo, in paſſing, that here ſhe is in flat contradiction with Miſs Munro, and with all the previous ſtatements in the cauſe.

ſtate, p. 76. E, F. G, H. But now ſee how Miſs Cumming's *amended* ſtory is particularized. ' Interrogated, Did Charlotte tell you what they were doing
' on the other occaſion when ſhe ſaw them as ſhe was going up to
' the drawing-room? depones, That *Miss Munro* and *ſhe* were
' *ſpeaking about it*, when Charlotte came into the room, and Char-
' lotte ſaid ſhe had ſeen them doing the ſame, and *that was all.*
' Interrogated, Was this at the ſame time when ſhe mentioned the
' ſtory of the key-hole? depones, *She does not remember.* Interro-
' gated, What were Miſs Munro and you ſpeaking of? depones,
' They were ſpeaking of what had happened the night before.
' Interrogated, What did Miſs Munro or you ſay in Charlotte's
' hearing before ſhe ſpoke to you? depones, *She does not remember.*
' Interrogated, Where did Charlotte ſay ſhe was when ſhe ſaw
' them in coming up to the drawing-room? depones, She ſaid ſhe
' was *on the outer ſtair* when ſhe ſaw them lying on the ſofa. In-
' terrogated, What did Charlotte ſay they were doing on the ſofa?
' depones, They were talking of what had happened the night be-
' fore, when Charlotte came into the room, and as Charlotte *ſeem-*
' *ed to know it*, they did not ſtop, and ſhe ſaid they were doing the
' ſame on the ſofa. Interrogated, Did Charlotte ſay that their
' dreſs was in diſorder when they were on the ſofa? depones, *No.*

' Interrogated,

'Interogated, Did ſhe ſay that they were kiſſing? depones *No.*
'Interrogated, Did ſhe ſay that the one was lying above the other?
'depones, *No.*'

Need the petitioners point out to your Lordſhips, the groſs contradictions and the groſs proofs of direct falſehood contained in this ſtatement? Is it not enough that ſhe expreſsly makes Miſs Munro to have been preſent at this converſation? And yet Miſs Munro moſt expreſsly connects the ſeeing through the key-hole, and the ſeeing upon the ſofa together, and never ſpeaks one word of the outer ſtaircaſe, or even ſuppoſes that there were two ſtories inſtead of one. This is ſufficiently remarkable; and as it is humbly thought your Lordſhips muſt determine whether you will believe this ſtatement or not, and that you cannot believe it; it is ſubmitted, whether there is not the moſt convincing evidence, that Miſs Cumming, having in ſome way or other recollected or diſcovered that there were no key-holes, and that the ſofa could not be ſeen in that manner, had juſt invented the new ſtory of the ſtaircaſe to remove the difficulty.

And what is the inference from this, but that the whole ſtory of the key-hole and the ſofa was the original invention of Miſs Cumming, though it was ſo managed as to make Miſs Munro think that it came from Charlotte?

But the moſt curious thing is, that in Miſs Cumming's own account of the matter, there is truly evidence to confirm this as the fact. For your Lordſhips will obſerve, that neither in the one caſe nor in the other, will ſhe fix upon any one circumſtance to give the ſtory coherence. She will fix upon *nothing that Charlotte said ſhe ſaw.* Not that they were lying on the ſofa: Not that they were kiſſing: Not that they were above one another: Not that their clothes were in diſorder: Not that they were embracing: In ſhort abſolutely nothing. Neither will ſhe fix upon one word that either ſhe or Miſs Munro *had ſpoken*, by which Charlotte could have underſtood what they were ſpeaking about: She *does not remember:* They were *ſpeaking about it:* Charlotte *underſtood*: Charlotte had ſeen *the ſame*, &c. Theſe are all the anſwers your Lordſhips can get from her. In ſhort, at laſt the converſation comes to amount to nothing; and the only inference which your Lordſhips can draw is this, that truly Charlotte never ſpoke any thing upon the ſubject, but that Miſs Cumming was *the interpreter of her underſtanding;* and by repeating theſe ſtories over and over, whiſpering perhaps while Charlotte was in the room, worked upon the credulity of Miſs

Munro till ſhe made her believe that Charlotte had an underſtanding or knowledge which ſhe had not, and that ſhe had really ſaid ſhe ſaw things which Charlotte herſelf had never ſaid ſhe ſaw. Accordingly, Miſs Cumming, with the utmoſt facility, arranges two ſtories, when one ſtory will not ſuit the purpoſe. She has no more difficulty in making Charlotte ſay ſhe ſaw from the ſtair-caſe, than ſhe had at firſt in making her ſay ſhe ſaw through the key-hole.

And to prove beyond the poſſibility of denial, that *de facto* Miſs Cumming did pretend to have had converſations with Charlotte, which ſhe never had, the petitioners have another example beſides that which plainly appears in the direct contradiction between Miſs Cumming and Miſs Munro in this inſtance.

Miſs Cumming has ſworn in the moſt poſitive terms, that ſhe never did ſpeak to any perſon whatever on the ſubject of the ſuppoſed indecencies of the petitioners, till ſhe ſpoke of it to Miſs Munro on the morning after her laſt occaſion, when ſhe had become ſure. ‘ Depones, That ſhe never ſpoke of it to any body till ‘ after ſhe was ſure ;’ and again, ‘ that ſhe *firſt* mentioned it to ‘ Miſs Munro, and *ſhe was the firſt perſon the witneſs ever mentioned* ‘ *it to.*’ And once more, ‘ That the ſame morning ſhe had the ‘ converſation with Miſs Munro in the front garden, they returned ‘ into the houſe, and continued the converſation when the maid ‘ came in; and *if the maid had not appeared to underſtand* what they ‘ were talking about, ſhe *would never* have mentioned it to the ‘ maid at all, AND SHE HAD NOT MENTIONED IT TO THE MAID ‘ BEFORE.’ And this is poſitively repeated in ſeveral other parts of the depoſition, particularly, p. 86. G., ‘ That ſhe never men-‘ tioned it to *any perſon* till ſhe did ſo *to Miſs Munro* in the front ‘ garden.’ The petitioners muſt aſk the defender, whether this is true or falſe? If it be falſe, it is a moſt deliberate falſehood, and the petitioners care little what elſe may be contained in Miſs Cumming's depoſition. If it be true, as the defender muſt ſay it is, your Lordſhips will attend to the conſequence.

State, p. 88. C, D, E.

Miſs Munro, upon recollecting the time when ſhe waked in a fright before either of her two occaſions, ‘ depones, That ſhe did ‘ mention that circumſtance to Miſs Cumming, and it was *upon* ‘ *that* occaſion Miſs Cumming told her ſhe had been accuſtomed ‘ to be ſo diſturbed, and *that ſhe at the ſame time added, that* ‘ *Charlotte the maid had told her, Miſs Cumming, that ſhe had noticed* ‘ *the behaviour of the purſuers.*’ Here is the very *firſt* converſation which Miſs Munro had with Miſs Cumming; and it is fixed to be

—— p. 62. B, C.

Coved Neighbourhood Thus Conversation to be made subsequent to the Morning after Miss Cumming's last Occasion

the

the very morning after Miſs Cumming's *laſt* occaſion. And yet though Miſs Cumming ſwears poſitively, that ſhe had never before ſpoken to any perſon, and moſt expreſsly, that ſhe had *not before ſpoken to Charlotte*, it is diſtinctly proved, that ſhe *then* told Miſs Munro that Charlotte had obſerved the conduct of the petitioners. Thus, as it is clear the accuſation itſelf originated with Miſs Cumming, ſo theſe pretended converſations of Charlotte are traced directly to Miſs Cumming as the ſource of them, and ſhe is proved *by direct evidence out of her own mouth to have abſolutely invented them.*

And ſee how this falſehood worked upon Miſs Munro, after being ſo communicated. There is a great confuſion about Miſs Munro's occaſions, and the time when ſhe ſays ſhe ſpoke to Charlotte. But what does it come to? She ſays ſhe complained of being *tired*, becauſe ſhe had been *diſturbed* and *got no ſleep*. And being interrogated how that could be, ſeeing that ſhe had had, by her own account, ſeven hours ſleep. 'And being deſired to explain how ſhe came to ſay ſo to the maid? depones, That *Miss Cumming having previouſly told her that the maid knew of the purſuers' behaviour*, the witneſs merely uſed theſe expreſſions to introduce the converſation.' Miſs Cumming perſuades Miſs Munro, that Charlotte was already deep in this myſtery. Then ſhe leads her to make uſe of an expreſſion, *conveying no meaning upon the ſubject*, and quite conſiſtent with a hundred other ſuppoſitions; and then *ſhe* interprets to Miſs Munro ſomething that may have been ſaid and forgotten, which had no reference to any thing of the kind, or impreſſes it on the mind of Miſs Munro, that any looſe words, and *even the ſilence*, of Charlotte, implied that ſhe *underſtood* the whole matter. At all events, this one thing is clear, either that Miſs Cumming has ſworn falſely, or that ſhe did pretend to Miſs Munro that Charlotte had made obſervations when ſhe Miſs Cumming could not poſſibly, according to her own account, have any ſuch knowledge.

There is another thing very remarkable about this ſtory of the key-hole. In the Condeſcendence, it was ſtated, that after Charlotte had made one obſervation to Miſs Munro, 'two or three of 'the oldeſt girls came down after, and *all joined in ſpeaking of 'what had happened;*' and it was *after this* that Charlotte is ſaid to have told the ſtory about the key-hole. Miſs Munro and the condeſcendence are directly at variance as to the time when this happened. The condeſcendence ſays. 'the morning after Miſs 'M— was *firſt* diſturbed,' &c. Miſs Munro, after detailing her

her *second* and *last* occaſion, ‘ depones, That *next* morning ſhe ‘ told,’ &c. Now, your Lordſhips will obſerve, that Miſs Cumming does expreſsly fix a converſation, in which Charlotte ſaid ſhe had ſeen the petitioners *on the ſofa upon that day when ſhe* FIRST *ſpoke to Miss Munro;* and which Miſs Munro has ſworn was *before either of her two occasions*, juſt after the time when ſhe had awaked in a fright. Miſs Cumming has not ſaid that Charlotte ever told her this *but once;* and though ſhe indeed attempts to get rid of the key-hole, ſhe ſwears expreſsly that Miſs Munro was preſent at ſome ſuch converſation. And yet Miſs Munro has poſitively ſworn, that ‘ Charlotte the maid *never made* ANY *remarks* to her ‘ as to *any* impropriеties in the purſuers' conduct, *until the witness* ‘ *mentioned to her that ſhe had been diſturbed on the* SECOND *occaſion of* State, p. 57. E. ‘ *the morning thereafter* !’

Now, take it in any way, there is a diſcrepancy which cannot be reconciled. Miſs Munro is made to get this information from Charlotte for the *firſt* time, nearly three weeks after, according to Miſs Cumming, Charlotte had told the whole *in her preſence*. At all events, this is repreſented as told to Miſs Munro, three weeks after it is clear Miſs Cumming had been filling her mind with all her own monſtrous ideas, and conſtantly inſiſting upon the knowledge of Charlotte. On the other hand, if it is not true that any thing of the kind paſſed on the morning after Miſs Cumming's laſt occaſion, then there is not only the moſt dreadful falſehood in the whole of that part of Miſs Cumming's depoſition, but the cleareſt evidence that Miſs Cumming had made up the whole ſtory about Charlotte ſeeing the petitioners on the ſofa, long before the incident of which Miſs Munro ſpeaks, and had fully poſſeſſed the minds of Miſs Munro and the other ſcholars with the reality of it. And what is the inference from this? What but that the whole originated with Miſs Cumming; and that by half ſentences, pretended *underſtanding*, and by lively interpretations of her own, ſhe perſuaded Miſs Munro that Charlotte did really aſſent to the truth of it.

This is not any mere ſuppoſition or theory without foundation. The petitioners have proved, that Miſs Cumming did invent, and has very recently invented, ſuch converſations without any reality; and it is as clear as the ſun, from Miſs Stirling's depoſition that ſhe had been ſo ſtrongly impreſſed by the perpetual talk of Miſs Cumming on this ſubject, and the conſtant reference to what Charlotte knew, that without at laſt being able to refer almoſt any thing as got directly from Charlotte, the firſt looſe impreſſion upon

upon which ſhe ſpoke proceeded upon the idea that all theſe things had been ſpoken by Charlotte. As ſoon as ſhe began to recollect herſelf, ſhe found it quite impoſſible to ſay what had been told by Charlotte, and what had been ſaid for her by Miſs Cumming; and in the end it appeared that ſhe had ſcarcely ever converſed with Charlotte at all; while Miſs Cumming for weeks together had been entertaining her with ſtories of this nature.

And at length, in perfect agreement with the inference to which all theſe facts and inconſiſtencies lead, Miſs Cumming herſelf, in a point where ſhe was naturally off her guard, ſtates in plain words, what is real evidence of Charlotte's total ignorance of the cauſe on account of which the ſchool had been broken up. Miſs Cumming ſays, that ſhe met Charlotte after ſhe had left the ſchool, and that Charlotte 'aſked the witneſs what ſhe was taken away 'for, and the witneſs thinks that ſhe herſelf replied, but is not 'quite ſure, that it was about the beds. Depones, That *Charlotte 'looked ſurpriſed*,' &c. Miſs Cumming ſays, that ſhe uſed an expreſſion which evidently admitted of many meanings, and the *obvious* meaning of which was merely that ſhe had made a pretence of diſſatisfaction with her accommodation, or of having been accidentally diſturbed by an incident of no conſequence in other reſpects. And then in exact agreement with Charlotte herſelf, who ſays ſhe was quite ignorant of the cauſe, and believed the petitioners to be bankrupt, ſhe ſays, that Charlotte *looked ſurpriſed*, as having previouſly had no idea on the ſubject.

It would be quite endleſs to attempt to point out all the inconſiſtencies and contradictions which are to be found in the teſtimony of Miſs Cumming. The petitioners leave thoſe which have occurred in the courſe of this inquiry without further remark; and though they cannot take any notice of *one-half* of thoſe that occur, there are ſtill a few particulars which muſt be mentioned, before taking leave of Miſs Cumming.

There is one moſt remarkable and flagrant contradiction, which was clearly ſtated in the hearing; and as it depends not on any difficulty about dates, but clearly upon the ſubſtance of the fact, the petitioners muſt beg leave now to ſet it down in writing.

Miſs Cumming, after detailing her laſt occaſion, her converſation with Miſs Munro on the morning, the pretended converſation with Charlotte immediately after, and then a pretended attempt to affront the petitioners publicly, which is flatly contra-

State, p. 72. H, I.; p. 73. A. dicted by Miſs Stirling, proceeds to ſay: 'Miſs Munro and the 'witneſs wiſhed to let them know that they knew it, and were to 'have ſpoken of it at breakfaſt-time, but they loſt courage: That 'on the ſame day when they were out walking, ſhe told Miſs 'Munro *that ſhe would complain of it, and of being tired, and that* 'she could not get sleep; and ſhe deſired Miſs Munro to put the 'queſtion to her, Did you not ſleep well; and that the witneſs 'would anſwer ſhe could not ſleep for the bed was ſhaking ſo; 'and when they came in from their walk, Miſs Pirie was in the 'room, and *the witness did complain, and the conversation took place* 'as had been agreed on. Depones, That Miſs Pirie ſtaid in the 'room for ſome time; but when ſhe ſaw that they perſiſted in it, 'ſhe left the room with her face quite red; and the witneſs 'ſaid to Miſs Munro; 'O, do you ſee guilt in her face!' That 'ſhe does not think any of the other girls were then in the 'room.'

Now, your Lordſhips will obſerve, that Miſs Munro, ſtating her information of the improper acts to come from her own obſervations, and after detailing *all the occasions* of which ſhe ſpeaks, the laſt of which was certainly, if it exiſted, between the 6th and 13th of Octo-

—— p. 49. D, E, F. ber, ſays: 'That *they agreed that Miss Cumming should tell her friends.* 'Depones, That Miſs Cumming and the deponent *agreed* that *they* 'would take ſome opportunity of giving a hint to the purſuers, 'that THEY *were aware of what was going on;* and one day when 'they were out walking, Miſs Cumming ſaid to the deponent that 'ſhe was *ſo tired with being disturbed in the night*, that ſhe was 'hardly able to go on with her leſſons, and that on returning 'from their walk *ſhe would complain of it;* and accordingly 'when they returned, *Miss Cumming said* to Miſs Pirie, that ſhe 'was exceſſively tired with being diſturbed in the night-'time,' &c.

The petitioners have formerly obſerved, that if your Lordſhips could think there is the leaſt truth in this ſtory, it would juſt prove the infinite weakneſs of Miſs Munro's mind, and the dreadful controul of prejudice to which ſhe had yielded. For if Miſs Cumming ſpeaks truth, this was upon the very day on which ſhe firſt ſpoke to Miſs Munro; and then, according to Miſs Munro, ſhe had as yet made no obſervations whatever for herſelf. But the ſtatement cannot ſtand thus. It is demonſtrably a plain falſehood; and the petitioners ſpeak confidently on the ſubject, becauſe Miſs Pirie has no recollection of any incident by which even Miſs Munro could be ſo deceived.

But the demonſtration of the falſehood does not depend on dates, as was evaſively pretended, but upon *facts*, and facts of *real evidence*. Both the witneſſes agree that it was *Miss Cumming who made the complaint of being tired with being disturbed in the night*; and Miſs Cumming conſiſtently ſtates that it was upon *the very day after Miss Woods was for the* LAST *time in Miss Pirie's bed*. This is very well. But then, by the ſame ſtatement, Miſs Cumming had never ſpoken to Miſs Munro till that morning; and Miſs Munro ſays, that the firſt time Miſs Cumming ſpoke to her, was immediately after the night when ſhe had waked in a fright, and *before either of the two occasions* on which ſhe had made any remarks for herſelf. But yet Miſs Munro's account of this ſtory, and *Miss Cumming's also*, neceſſarily ſuppoſe, that the intended intimation to Miſs Pirie took place *after both of them were satisfied on the point*, and conſequently after Miſs Munro had been convinced by her own experience. It is poſitively placed *after* both the occaſions, when Miſs Pirie is ſaid to have come to Miſs Woods's bed, and *after* their agreement being complete, it had been ſettled that Miſs Cumming ſhould inform her friends.

Now here is a flat contradiction in the eſſential facts of the ſtory. For, 1. It was impoſſible that Miſs Cumming could make the complaint of being tired, which is the leading circumſtance in the ſtory, upon any other day than that very day after her laſt occaſion on which ſhe herſelf has fixed. She was never diſturbed *afterwards*, and conſequently could not complain of being tired; and as ſhe had never *before* ſpoken to Miſs Munro, the incident could not take place of any *earlier* date. On the other hand, *it could not be upon that day*, becauſe both of them agree that the concert was formed in conſequence of their *mutual* obſervations, and particularly Miſs Munro ſwears pointedly, that it was *after all her own observations upon the two occasions*, which had not then happened, and one of which did not take place, if at all, *till three weeks afterwards*.

The petitioners got no anſwer to this; and, with ſubmiſſion, it cannot be anſwered. But, unleſs your Lordſhips are prepared, in a cauſe in which, of all others, the conſiſtency of witneſſes ought to be tried with the utmoſt rigour, not to give effect to a manifeſt detection of *a made-up story*, the petitioners apprehend that this goes deep into the ſubſtance of the caſe, and into the credit of both the witneſſes. For, though the petitioners have a very different opinion of Miſs Munro from what they have of Miſs Cumming, they think that ſhe has ſhewn great weakneſs in the buſi-

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neſs, and has been miſled by the prejudices infuſed into her, into a very ſerious want of candour.

There was an inference drawn againſt the petitioners from theſe and ſome other ſtatements of the witneſſes, which they muſt humbly think to be clearly ill founded. It was ſaid, that the petitioners ceaſed to go to one another's beds as ſoon as they had reaſon to think they were ſuſpected. Now, with great ſubmiſſion, if the above ſtatement were true, it is at leaſt as clear as poſſible that the petitioners were totally inſenſible of it, and that it produced no ſuch effect as that ſuppoſed. If the witneſſes be believed, Miſs Pirie was quite ſenſible of the meaning; and it was done jointly by Miſs Cumming and Miſs Munro. But yet if it took place at all, it was the day after Miſs Woods was laſt in Miſs Pirie's bed. And, notwithſtanding this, both the times on which Miſs Munro condeſcends, were clearly ſubſequent. But truly it is impoſſible to draw any concluſion from the circumſtance of the alleged interviews having ceaſed at a particular time; becauſe the petitioners have always ſtated, that, in fact, there were one or two accidental occurrences, which, though perfectly innocent, may be the foundation of theſe ſtories. And if they were innocent and accidental occurrences naturally ariſing out of their ſituation, it was natural they ſhould not be repeated, if the ſcholars were thereby diſturbed; and, more particularly, as about the middle or end of October, their ſubject of difference was in a great meaſure ſettled. The fact, therefore, though it were true, ought to lead to no concluſion, becauſe it is at leaſt equally conſiſtent with the ſuppoſition of innocence.

The petitioners cannot refrain from giving your Lordſhips one more moſt deciſive example of Miſs Cumming's powers of invention and embelliſhment, eſpecially in dialogue. Miſs Munro ſays, that upon her ſecond occaſion ſhe coughed and turned herſelf ' That upon this Miſs Woods turned to Miſs Pirie, and ſaid, 'I " ſuſpect ſhe is awake," &c. Now ſee how Miſs Cumming *gets u*

State. p. 73. D, E. this converſation. ' Depones, That Miſs Munro told her, th' one night when they were in her bed, ſhe wakened with th' noiſe they were making, and that Miſs Woods had turned, an' ſeeing Miſs Munro awake, ſhe turned to Miſs Pirie, and ſaid ' Miſs Pirie, in a whiſper, ' *Good gracious, what ſhall we do, ſhe* " *wide awake ;*' and that then Miſs Pirie covered herſelf up with th' clothes; and that then Miſs Woods ſaid to Miſs Munro, ' *H* " *long have you been awake?*' And Miſs Munro anſwered, ' *A l* " *time.*" Your Lordſhips here ſee that Miſs Cumming ſticks a

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nothing to make any words ſuit her purpoſe. The petitioners, if converſing together in that ſituation, might be unwilling to diſturb Miſs Munro, and deſirous not to awake her. But Miſs Cumming's fancy at once ſupplies words that Miſs Munro never heard of, calculated to imply a conſciouſneſs of criminality; and it will be remembered, that this was given with the utmoſt dramatic effect. It is plain after this, that your Lordſhips cannot depend, even in point of accuracy, upon one word that Miſs Cumming ſays in all the converſations ſhe has reported. She twiſts every thing to ſuit her own ſhocking theory.

The petitioners had marked a great number of other contradictions, juſt as plain and direct as could be figured in any caſe. But they are really ſick of the ſubject; and their counſel feels it as one of the moſt painful duties that he ever had to diſcharge. But, with great deference, they are in the judgment of your Lordſhips, whether it is not now as clear as any thing can poſſibly be, that Miſs Jane Cumming, to whom this calumny is directly traced, is one of the moſt unfair witneſſes that ever appeared in a Court. It is demonſtrated, that ſhe invents facts,—that ſhe colours with the utmoſt freedom,—that ſhe alters facts to ſuit her object,—that ſhe ſuppreſſes every thing that makes for the petitioners, till ſhe is forced to confeſs it,—that ſhe will remember nothing where the particulars might ſerve the petitioners, or endanger the conſiſtency of her ſtatement.—that, on the other hand, ſhe is minute to the laſt degree in all her ſenſes, wherever the circumſtances make againſt the petitioners, and ſhe thinks there is no chance of detection.

Recollect, then. the legal objections to her as a witneſs,—the natural objections,—the expreſs reſervation in the interlocutor of the Court,—the manner in which the teſtimony was given,—the bitterneſs, the keenneſs diſplayed throughout it,—the direct falſehoods which have been detected,—all the phyſical and moral improbabilities againſt the truth of the ſtory; and, with great ſubmiſſion, the reſult comes as near to a matter of demonſtration as human reaſon can ever expect to find, that every thing in her depoſition that implies the criminality of the petitioners has been invented by her own malice. It has been ſaid, that allowances are to be made. But Miſs Cumming leaves no room for allowances; and, if there were nothing elſe, the interlocutor of the Court alone, admitting her only *cum nota*, entitles the petitioners to ſay that ſhe is not a witneſs who is entitled to any allowances whatever.

The petitioners now aſſume that Miſs Cumming has ſworn falſely and maliciouſly. They have before proved, that from her the firſt idea of this abominable calumny was communicated to Miſs Munro, before the latter had formed even the ſlighteſt ſuſpicion, and before either of the occaſions took place of which ſhe has ſince given an account. The caſe has ſometimes been argued as if Miſs Cumming could be thrown out of it, and the evidence of Miſs Munro, with Mary Brown and Miſs Stirling, taken in the ſame way as if Miſs Cumming had never done or ſaid any thing on the ſubject. But, with great deference, there could not be any thing more unjuſt than this. Miſs Munro never dreamt of ſuch a thing till it was put into her head by Miſs Cumming; and then ſhe interprets the moſt equivocal circumſtances ſo as to ſuit this theory. She is ſeduced by Miſs Cumming,—made to believe things that never took place,—frightened by the horrible nature of the myſtery, and tempted by the chance of getting rid of the ſchool,—till ſhe is at laſt involved in a plot, which, the defender herſelf has ſaid, if not clearly proved, lands all concerned in being the inventors of this horrible ſtory. Miſs Stirling, again, knows nothing. She has nothing but a very ſtrong prejudice, created by the perpetual talk of Miſs Cumming and Miſs Munro on the ſubject; for it is not proved that ſhe ever heard any thing of the leaſt conſequence from Charlotte. Can your Lordſhips, then, with any juſtice to the petitioners, enter upon the conſideration of Miſs Munro's teſtimony, without remembering that her mind was firſt poiſoned by Miſs Cumming, and that that Miſs Cumming has perjured herſelf in the moſt melancholy way in endeavouring to ſupport her accuſation? With great ſubmiſſion, the caſe is finiſhed, if your Lordſhips are ſatisfied on this point. It is in vain to look into other teſtimonies after it; and equally in vain to pretend, that Miſs Munro got her notion of the crime from Mary Brown. She never ſpoke to Mary Brown till the 6th of October; and for at leaſt fourteen days before that time, Miſs Cumming had been conſtantly employed in working the belief of this piece of infamy into her mind. And though ſhe ſays that ſhe did not think it ſo criminal, till Mary Brown ſaid that if it were true, the petitioners ſhould be burnt, it is a fact admitting of no denial, that at or about the 20th of September, Miſs Cumming had communicated all her ideas to her; and nearly the whole of the intrigues that followed had already taken place more than a fortnight *before Mary Brown came to town*. And accordingly it appears, that the very firſt time ſhe ſpoke to Mary Brown, ſhe

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informed her of her communications with Miss Cumming, and alſo that the maid knew of it. But it is a moſt remarkable fact, that neither then, *nor afterwards*, did ſhe ever make any communication to Mary Brown of the particulars ſaid to have been ſpoken by Charlotte: For Miſs Munro ſwears poſitively, that '*ſhe did not* State, p. 54. C.
'*mention to Mary Brown the particulars which Charlotte had commu-*
'*nicated to her.*' And Mary Brown agrees in this.

But the petitioners are humbly confident, that when your Lordſhips are ſatisfied that Miſs Cumming cannot be believed, you will find it to be attended with no difficulty, to diſpoſe of all that has been ſaid by Miſs Munro, or any other witneſs. For though the defender puſhes Miſs Munro forward upon all occaſions, it is demonſtrated that all *her* alleged obſervations are but a ſequel to the inventions of Miſs Cumming, and produced, by means of their operation to pervert the ſimpleſt facts in Miſs Munro's mind.

In the firſt place, though the petitioners do by no means intend to put Miſs Munro at all upon a footing with Miſs Cumming, they cannot admit that ſhe is a witneſs above exception. It is quite clear, that ſhe yielded to Miſs Cumming's inſinuations with a facility quite inconſiſtent with any ſtrength or acuteneſs of mind. She has miſrepreſented trivial circumſtances in a way by no means favourable to her candour; and there are many contradictions in her teſtimony, and ſtatements inconſiſtent with the depoſitions of the other witneſſes.

And one of the moſt remarkable circumſtances is, that Miſs Munro takes upon her to ſwear, 'That it was *the general opi-* —— p. 56. D.
'*nion in the ſchool* that the purſuers *caressed and fondled each other*
'*more than was consistent with ordinary female friendship.* Depones,
'That Miſs Cumming and *Miss Stirling had so expressed themselves*
'*to the witness*; and ſhe rather thinks the Miſs Dunbars, but is not
'quite ſure; and ſhe does not recollect any others that did ſo.'
And the ſame thing is ſaid in equally poſitive terms, at page 49. A, B. This was a moſt cruel remark, if it was not true; and the moſt deciſive proof of vehement prejudice in Miſs Munro. *That it was not true, is diſtinctly proved.* For Miſs Stirling, 'Being in- —— p. 112. F.
'terrogated, If at that time, or ſince, upon reflection, after all ſhe
'has heard, it ſtruck her that there was any thing more warm or
'improper in their manner than became any other two friends,
'under ſuch circumſtances? depones, *Not in the leaſt.*' Even Miſs Cumming contradicts it. But Miſs Munro herſelf, after ſome croſs examination relative to the quarrels of the petitioners, depones,
'That the coolneſs ariſing from theſe quarrels, ſometimes *laſted a* —— p. 56. H.
'*week*

'*week or ten days* before a reconciliation took place. Depones,
'That ſhe has ſeen them reconciled to each other after ſuch coolneſs, *and it was on thoſe reconciliations that they particularly careſſed each other.*' Miſs Munro had given the aſſertion broadly, keeping this circumſtance to herſelf; and ſhe had given it expreſsly, not merely as her own impreſſion, but as the general opinion, and particularly that of *Miss Stirling*. In this ſhe is at total variance with every other witneſs; and Miſs Stirling, in particular, having been preſent at one of the reconciliations, anſwered the interrogatory as to her opinion, *instantly* and *decidedly*, '*Not in the least.*' And, 'Interrogated by the Lord Juſtice-Clerk, Did any other young ladies at the ſchool beſides Miſs Cumming and Miſs Munro ever tell the witneſs that they had obſerved any thing improper or indecent in the conduct of the purſuers to each other? depones, *They did not.*'

State, p. 51. C.

The petitioners have already ſhewn your Lordſhips, that the ſtory told by Miſs Cumming and Miſs Munro about the plot for letting Miſs Pirie know that they knew, cannot be true; as it has been ſo made up as to carry with it a flagrant inconſiſtency, whatever time be fixed upon for its taking place. But Miſs Munro depones, 'That ſhe thinks *they told Miss Stirling* ſome time that afternoon what Miſs Cumming had ſaid to Miſs Pirie.' But Miſs Stirling *does not appear to have ever heard of ſuch a thing*; and as little did any other perſon in the houſe.

—— p. 57. D.

The petitioners muſt give your Lordſhips another ſpecimen of Miſs Munro's unfairneſs. After having mentioned the quarrels of the petitioners, and having ſaid that they *ſometimes laſted ſa ten days at a time*, ſhe depones, 'That ſhe does not remember, and does not think that there was any ſubſiſting coolneſs between them previous to either of the times when Miſs Pirie came into Miſs Woods's bed. Being interrogated, Whether ſhe thinks there might have been any private quarrel between them without her knowing it? depones, Perhaps there might, *but ſhe does not think there was.*' Now, what title could Miſs Munro have to conclude, that there *was* no ſubſiſting cauſe of quarrel or coolneſs? She herſelf, on the allegation of deafneſs, ſays, that ſhe *did not hear any part of their converſation* in either inſtance; although it appears ſhe heard other converſations quite readily. But the ſingular thing is, that, *in point of fact*, your Lordſhips have the moſt diſtinct evidence of a ſubſiſting coolneſs at or about the very time alluded to. Miſs Munro's firſt occaſion is placed about the end of September; and your Lordſhips have Miſs Woods' letter to her ſiſter, *of the 24th September*,

—— p. 56. I.; 57. A.

September, and the anſwer to it on the 3d of *October*, proving ſtrongly the ſtate of irritation in which the parties were. And then you have Miſs Pirie going to Mrs Hamilton, to conſult her about their quarrels, *late in October*; and you have the letter of Miſs Pirie's ſiſter on the 31ſt of October. So that it is a certain fact, that the parties were all the time in a ſtate of great irritation towards one another, which was every now and then producing the diſagreeable altercations, which they took pains to conceal from the ſcholars. Nothing can ſhew more the unfairneſs or undue bias of a witneſs's mind, than to draw a ſtrong inference *without any grounds to go upon*, and *contrary to the fact*.

But perhaps the moſt remarkable proof, either that Miſs Munro was very uncandid, or that her mind was entirely ſubdued, ſo as to attend to nothing that made againſt the theory, is one which goes very much into the ſubſtance of the material parts of her depoſition. It has been proved, as clearly as any fact in the cauſe, that Miſs Pirie was in the practice of ſleeping with *a wrapper, petticoat and ſtockings*. Miſs Munro *throughout her whole deposition ſuppreſſed this fact totally*; and the petitioners themſelves not having been preſent at her examination, the queſtion did not occur to their counſel. But Miſs Munro went farther than ſuppreſſing it; for ſhe deponed, that ſhe thought they had nothing on but their ſhifts upon the firſt occaſion which ſhe deſcribes; and yet the ſame witneſs expreſsly depones, 'that upon the *firſt* occaſion, when ſhe ſays ſhe 'believes Miſs Pirie's clothes were off, *ſhe had no other reaſon for 'believing ſo than from her ſuppoſing it to be in the dead of night*.' This was evidently no reaſon at all; and it was contrary to the fact. And it is very difficult for the petitioners to believe, that Miſs Munro was ignorant of Miſs Pirie's common night dreſs. At all events, the fact being proved, the concluſion drawn by Miſs Munro ſhews how little reliance can be placed upon *mere inferences* thus broadly aſſerted as *matters of fact*.

State, p. 62. G.

—— p. 52. C.

Miſs Munro has deponed to various occaſions, on which Miſs Pirie had been in Miſs Woods' room, and by the bed, without any impropriety being alleged. There is one time when ſhe heard a converſation about Miſs Pirie's brother-in-law, and Miſs Stirling. It was then dark, and Miſs Munro concludes, that Miſs Pirie was ſtanding in the room. There is another occaſion, when Miſs Pirie confeſſedly ſat down on the bed, and rubbed Miſs Woods' back: And there is alſo a third example perfectly innocent.

Accordingly the fact was, that Miſs Pirie, whenever ſhe was later up than Miſs Woods, naturally paſſed through this room in

going to her own bed; and ſometimes ſhe ſtopped and converſed with Miſs Woods, when ſhe had not had an opportunity of ſpeaking to her through the day. The petitioners think it right to explain, that it was ſtated in the Anſwers to the Condeſcendence, that on theſe occaſions Miſs Pirie had *always* a candle with her. But this was one of the inaccuracies occaſioned by the haſte in which the paper was prepared. This muſt not be ſuppoſed to be an after thought; for the petitioner's *counsel* can aſſure your Lordſhips, that they were furniſhed with a copy of the Anſwers, in which the word '*generally*' was written on the margin, in place of *always*, *before the proof began.* And it will be remembered, that ſome alluſion was made to theſe inaccuracies, though they were not thought of ſufficient conſequence to give in any formal amendment.

But Miſs Munro having thus ſaid, that ſhe was aware of Miſs Pirie being ſometimes in the room, and even on the bed, when no impropriety is alleged, your Lordſhips will at once ſee that there is nothing at all in the circumſtance of Miſs Pirie being found there at night, and in the dark; and that the fair preſumption is, that the other interviews, of which ſo much is made, were equally innocent.

It was ſaid indeed, that the mention of theſe other occaſions, without attaching criminality, ſhews, that Miſs Munro may be depended upon in regard to the others. But, with great ſubmiſſion, this is very far from being a juſt concluſion. For, 1. Theſe occaſions ſtated as innocent, were *only brought out upon the cross examination*; and Miſs Munro could not pretend to ſtate criminality in them, after having ſo pointedly confined herſelf to two occaſions only. But, 2. It is to be remembered, that Miſs Munro was not left to her own ſpeculations, but was deeply initiated by Miſs Cumming in the whole myſtery, before ſhe ever thought of criminality or indecency at all. With her inſtructions, her poſitive aſſertions, her details, her ſtories about Charlotte, Miſs Munro went to work with a mind totally changed, and prepared to pervert circumſtances which before ſhe had looked upon as quite innocent, into grounds of accuſation. And then, 3. It might happen by accident, that the circumſtances which did occur, were ſuch as, to a mind already full of ſuſpicion, were more doubtful or equivocal. She heard their whiſpers, but could not hear what they were ſaying; and in that ſtate interpreted every thing according to the theory which Miſs Cumming had taught her.

But now, what is it that Miſs Munro tells? If the two occaſions deſcribed were interviews of unlawful paſſion, no two things

can

can poſſibly be more different, than the deſcription given by Miſs Munro, and that given by Miſs Cumming. With Miſs Munro there is *no kiſſing, no careſſing, no pulling up of the ſhifts, no laſcivious converſation, no ſtrange noiſe!* And yet it is extremely remarkable, that Miſs Cumming did attempt to ſay, that Miſs Munro had heard *the noiſe*. For ſhe ſays, that in her firſt converſation, 'Miſs Munro ſaid, that the other night Miſs Pirie had been in Miſs Woods's bed, *and ſhe heard a curious noiſe, and wondered, but did not know what it was.*' But in Miſs Munro's bed there is nothing of the ſort; nor is it even hinted at in her depoſition. Not one of the circumſtances deſcribed by Miſs Cumming, from which alone her certainty of the indecency was drawn: Nothing at all, in ſhort, but the allegation that Miſs Pirie was in Miſs Woods's bed: that there was ſome motion of the bed, and that the witneſs believed Miſs Pirie to be above Miſs Woods. State, p. 71. I.; 72. A.

But examine a little the particulars of the two occaſions. Miſs Munro depones, 'That upon the firſt of theſe occaſions ſhe obſerved a ſhaking of the bed, and the bed-clothes toſſing about, and that ſhe felt the bodies of one or both of them in motion. Depones That upon this the witneſs ſpoke to them, and ſaid, 'Miſs "Pirie, I wiſh you would go away, for I can't get ſleep;' upon which Miſs Woods ſaid to Miſs Pirie, 'You had better go away, "Jane, for I am afraid you will catch cold ſtanding there;' but at this time Miſs Pirie was ſtill in bed; and that Miſs Pirie then ſaid, 'I am not in the bed. I am only ſtanding beſide it;' and that when Miſs Pirie made this anſwer, ſhe was ſtill in bed, but then got up and went away.' But this is only the direct account of the matter; and a moſt lame account it is. It afterwards appears that ſhe had been awake for half an hour before ſhe ſpoke. And ſhe depones, 'That while ſhe thus lay awake, ſhe heard *a great deal* of converſation going on in whiſpering, *but ſhe could not make any kind of ſenſe of what they ſaid*, though, perhaps, ſhe might pick up a word here and there, though ſhe does not now remember.' It was pretended that Miſs Munro was deaf The petitioners had never found it out before; and they are ſure your Lordſhips would never have found it out in the examination. But yet, though ſhe had been lying awake for half an hour, and the petitioners are ſaid to have been *quite cloſe to her ear*, ſhe could not report a ſingle word that they had ſaid. —— p. 46. C.; 47. A, B. —— p. 51. C.

But your Lordſhips will obſerve that the witneſs aſſumes it as quite certain, that Miſs Pirie was lying above Miſs Woods, and was entirely in the bed on this occaſion. But then your Lordſhips will attend

tend to the circumſtances, and to the *evident wavering* of the witneſs
State, p. 61. C. on the ſubject. On a ſpecial interrogatory, ſhe depones, 'That ſhe
'*did not know which of them was uppermoſt* the firſt time. And being
'interrogated, How in the dark ſhe came to know that one of them
'was lying above the other, more than by the ſide of the other?
'depones, *That ſhe could not get the clothes kept upon her.*' This
was all the anſwer given; and though upon a particular interro-
gatory, ſhe chooſes to ſay, that ſhe *thought* ſhe felt both their bo-
dies, yet this is ſaid with no certainty; and ſtill the thing upper-
moſt in her mind evidently was, the difficulty of keeping the
clothes upon her. But can there be any thing more natural, than
that if Miſs Pirie had ſat down, or reclined on the ſide of the bed,
above the clothes, it ſhould have drawn them from Miſs Munro,
or prevented her from keeping them upon her. It is by far the
moſt natural ſuppoſition of the two, even independent of the ab-
ſurdity of the charge itſelf.

But obſerve how this is ſtrengthened, by what the witneſs was
—— p. 52. D. obliged to tell; for ſhe 'depones, That ſhe is *not quite poſitive*
'*that Miss Pirie's legs were in bed upon the firſt occaſion*, but ſhe
'thinks ſo, and ſhe felt the legs of *one* of them.' No doubt ſhe
may have felt the legs of Miſs Woods, who was lying cloſe to
her. But ſurely the petitioners are entitled to the ſuppoſition,
that Miſs Pirie's legs were not in the bed, as the witneſs cannot
ſwear that they were. Then what does it come to? If there is
any truth in the ſtatement at all, it is no more than this, that
Miſs Pirie, with her legs upon the floor, might be half-reclined
upon the bed, whiſpering to Miſs Woods, in order not to awaken
Miſs Munro; and when Miſs Munro began to ſpeak, and to com-
plain that ſhe could not keep the clothes on her *on account of Miss*
Pirie being in the bed, it might be ſaid quite truly, that Miſs Pi-
rie was not in the bed, but ſtanding by the ſide of it. And a
very ſlight addition to the converſation, a ſingle word, would ren-
der the remark quite natural.

But at any rate, as Miſs Munro does not ſwear that Miſs Pi-
rie's legs were in bed at all, nothing can be plainer, than that
her idea of the one being above the other, is quite inconsistent with the
action in which they are supposed to have been engaged. For it is
nonſenſe, if Miſs Pirie's legs were not *certainly* in the bed.

Your Lordſhips are to recollect the many blunders into which
Miſs Munro has fallen, her imperfect memory, even her deafneſs
if it exiſts, and above all the manner in which her mind had
been prepoſſeſſed by Miſs Cumming. It muſt be recollected al-
ſo.

ſo, that it was pitch dark. And yet after all, Miſs Munro does not ſtate any one thing from which any reaſonable concluſion could be drawn. She does not ſay that Miſs Pirie was moving above Miſs Woods, at leaſt ſhe deſcribes no motion to infer the thing intended. It is not probable on any ſuppoſition, that they could be for half an hour quite ſtill in one poſition. And as to the ſhaking of the bed, Miſs Munro herſelf, though ſhe pretends that the bedſtead was a *new* one, in which ſhe is *directly contradicted* by Mrs Woods *to whom it belonged*, and who ſwears it was an *old* bedſtead, yet admits ' that it was *apt to creak a little when people moved in* ' *it*, but ſo very little as not to be any thing remarkable.' Your Lordſhips will ſuppoſe a little more than Miſs Munro ſays, when you ſee ſhe ſtates the bedſtead to be *new*, when in fact it was old; and you will make allowance for the force of an inflamed imagination.

State, p. 125. C.; p. 52. D.

When all theſe things are conſidered, it is ſubmitted that no inference whatever can be drawn from all that Miſs Munro ſays as to this firſt occaſion, even if it were quite correct. The petitioners know it to be totally incorrect: They know that if Miſs Munro was awake upon any ſuch occaſion as that deſcribed, ſhe muſt have heard perfectly well what they were talking about, and they know, that though Miſs Pirie may, when carrying on ſuch a converſation, have reclined or bent over the ſide of the bed, ſhe was not in Miſs Woods' bed.

The particulars of Miſs Munro's ſecond occaſion are firſt detailed on the 47th page of the State. The time of it is fixed to have between the 6th and the 13th of October; as it was between Miſs Munro's firſt converſation with Mary Brown, which was on Saturday October 6., and her ſecond converſation, which was on Saturday the 13th October. She ſtates that ſhe awaked,—that Miſs Pirie was lying in the bed above Miſs Woods,—that ſhe obſerved the ſhaking of the bed,—motions and breathings,—that there was ſome day-light in the room,—that ſhe coughed and turned herſelf; ' —that upon this Miſs Woods *turned to Miss Pirie*, and ſaid, ' *I* " *ſuspect ſhe is awake;*' and this was *ſaid in a whiſper.*' It appears ſhe could hear a whiſper, though Miſs Woods had turned away from her, and knew ſhe was awake; and ſhe was obliged to confeſs that Miſs Pirie was *not above Miss Woods at this time*, in order to account for the expreſſion of Miſs Woods *turning*. She then ſays, that Miſs Woods aſked if ſhe had been long awake, and firſt told her where ſhe might find ſome barley-ſugar for her own cough, and afterwards aſked her to go for a glaſs of water for Miſs Woods herſelf; that ſhe went, having previouſly

—— p. 47. D. &c.

ſeen Miſs Pirie in the bed; and that when ſhe came back, Miſs Pirie was gone. It appears, that when ſhe told this ſtory to Mary
State, p. 48. D. Brown, it was 'without mentioning that it was *day-light*, or entering into *any other* 'particulars.'

She afterwards depones, 'That upon the ſecond occaſion alſo ſhe heard converſation going on between them in whiſpers, 'but *could not diſtinguiſh what it was*, &c.:' 'That the whiſpers 'were *not* ſuch as to enable her *to diſtinguiſh the one voice from*
—— p. 61. F. '*the other*;' and that what ſhe did hear, as above deponed to, was 'not *in a higher tone than the reſt* of the converſation, but 'ſhe had turned round towards them to hear what they would 'ſay.' But if *ſhe* had turned, Miſs Woods had turned alſo. She ſays, 'That ſhe had coughed ſeveral times, to let them know that 'ſhe was awake;' and ſhe pretends that ſhe had *turned ſeveral times*, and had *ſeen* Miſs Pirie above Miſs Woods. It afterwards appears, that, though ſhe is quite poſitive that Miſs Pirie's legs were in the bed, ſhe is obliged to qualify this by ſaying, 'at leaſt 'ſhe was *lying in ſuch a manner as to perſuade the witneſs that was* 'the fact, as ſhe was below the bed-clothes.'

But upon the whole of this ſtory, there are no data, even if it were all true, upon which any concluſion of conſequence could be built. Not a word of the converſation, except what was quite natural, that they were affraid they had awakened Miſs Munro, or that ſhe had been liſtening to their converſation; and nothing elſe but the mere circumſtance of Miſs Pirie being in the bed, and ſome arbitrary idea about her changes of poſition.

But the ſtatement cannot be true as it is given. Suppoſe the petitioners had had the object attributed to them: Suppoſe they had been mad enough to come to gratify it in this manner; and this, even after what had paſſed on the former occaſion! Will your Lordſhips believe, that, in a bed of no great dimenſions, Miſs Munro could *cough repeatedly*, and TURN SEVERAL TIMES DIRECTLY ROUND UPON THE PETITIONERS, SO AS TO SEE WITH DAY-LIGHT, Miss PIRIE ABOVE Miss WOODS, and yet that they ſhould not ſooner have diſcovered that ſhe was awake, and looking at them? If it were true, *her eyes muſt juſt have met Miſs Pirie's* when ſhe turned round. The thing is quite impoſſible; and as to all the other times, *Miſs Munro's back was to the petitioners*, ſo that her ſtatement of their poſition is all mere inference. And yet there is not one other circumſtance of the leaſt conſequence.

Now, your Lordſhips will recollect, that the petitioners did diſtinctly ſtate in the Anſwers to the Condeſcendence, that upon one occaſion

occaſion about this time, Miſs Pirie being very unhappy about a ſerious diſpute ſhe had juſt had with Miſs Woods, had riſen, and in her ordinary dreſs, of a night-gown, petticoat and ſtockings, had gone to Miſs Woods' bed, and there had ſome converſation with her for a conſiderable time relative to the diſpute, while no doubt ſhe was in conſiderable emotion. And undoubtedly they carried on their converſation in as low a tone as they could, and were anxious not to awake Miſs Munro. The petitioners ſhall allow the defender to hold, that Miſs Pirie had lain down in the bed, while ſhe was talking with Miſs Woods. But after all that Miſs Munro can fairly be alleged to have deponed to, is aſſumed, the petitioners aſk, If there is the ſlighteſt proof in it, that they were guilty of an unnatural luſt?

Your Lordſhips will here recollect the ſtrange abſurdity of the charge itſelf,—the characters of the petitioners,—their friendſhip, and particularly the ſtrong feelings of Miſs Pirie on the ſubject, as expreſſed to Mrs Hamilton—the exiſting quarrels clearly proved—the unneceſſary arrangement of the houſe—the ſuppoſed warnings which they had received—and all the moral improbabilities connected with the caſe. Then remember the falſehoods of Miſs Cumming—the inſtructions which *it is proved* ſhe had given to Miſs Munro—the prejudice and contradiction viſible in Miſs Munro's own teſtimony—the fact of Miſs Pirie's being dreſſed in a wrapper and petticoat—the natural object of the petitioners to conceal their diſputes from their ſcholars—the inability of Miſs Munro to report one word of their converſation, and the total inconſiſtency of this perpetual whiſpering with the object aſcribed. And, upon the whole reſult, they ſubmit, with the greateſt deference, but in the humble confidence of innocence, that there is no appearance of indecency or criminality proved; and that the fair concluſion is, that a lady who is ſhewn to have miſinterpreted the moſt ordinary acts of friendſhip into the groſs fondling of wantonneſs, may well be ſuppoſed to have drawn her inferences here in the ſame way, and ſtrained her imagination to pervert incidents of the ſimpleſt and moſt innocent nature.

The petitioners do not think it neceſſary to trouble your Lordſhips with the details of Mary Brown's teſtimony. It does not appear to them that ſhe confirms Miſs Munro in any thing of the leaſt conſequence. She proves indeed, that Miſs Munro, *after having been for a fortnight or three weeks receiving daily inſtructions from Miss Cumming*,

Cumming, and after having had her imagination inflamed, ſo as to miſinterpret the ſimple incidents of her firſt occaſion, had had ſome goſſipping on the ſubject with her nurſe; who, by her own account, without having one circumſtance on which to go, had proceeded to inflame her mind ſtill more, by telling her that the petitioners ought to be burnt. It appears, that Miſs Munro did *not* tell her that the petitioners moved; that ſhe did *not* tell her that there was day-light, or that ſhe ſaw any thing; that ſhe did *not* tell her what Charlotte the maid had ſaid; but 'that Miſs Munro 'told her that ſhe had complained to Miss Cumming of being thus diſ-'turbed, and that Miss Cumming told her the same thing had often 'happened to her,' &c. In ſhort it proves, no doubt, that Miſs Munro had told ſomething of her being diſturbed to this nurſe, and of her previous communications with Miſs Cumming. The petitioners have no doubt that ſhe told alſo Miſs Cumming's ſtory, and Miſs Cumming's inferences. But if ſhe did not, there are certainly few perſons of the ſame credulity with Mrs Mary Brown.

The teſtimony of Miſs Stirling affords a very ſtriking proof both of the pains which Miſs Cumming had taken to make her calumny be generally believed, and of her ſucceſs in exciting in an uncorrupted mind the ſtrongeſt poſſible prejudice. Miſs Stirling certainly meant to be perfectly fair. She ſwears moſt explicitly, that ſhe *knew* nothing whatever to the prejudice of the petitioners, except it be the fact, material in their favour in this cauſe, that they had unluckily diſputes with one another. She neither ſaw nor heard any thing improper in Miſs Pirie's bed, though ſhe ſlept cloſe by it. She obſerved nothing improper, nothing not perfectly conſiſtent with ordinary friendſhip, in the general conduct and behaviour of the petitioners. She had a high opinion of them, and was ſenſible of her own great improvement under them. In ſpite of all this, it was quite manifeſt that her ears had been ſo perpetually filled for weeks together with the calumnious aſſertions of Miſs Cumming,—partly of her own obſervations, partly on the authority of Miſs Munro, and partly on the pretended authority of Charlotte, that, not being accuſtomed to ſuch diſtinctions, Miſs Stirling had never accurately diſcriminated in her own mind in what way the particulars had come to her. At firſt, your Lordſhips were led to believe that ſhe had had *a great deal* of converſation with Charlotte on the ſubject. For ſhe ſays, 'That 'Charlotte the maid talked about them ſo often, that ſhe cannot 'remember who was preſent.' But as the examination went on,

State, p. 108. A.

Miſs

Miſs Stirling became more diſtinct, and began to recollect, that there was ſcarcely any thing ſhe could fix upon as having been told her directly by Charlotte. Miſs Cumming's ſtory about Charlotte ſeeing the petitioners in the dreſſing-room was mentioned; and Miſs Stirling ſays, 'She remembers hearing *ſomething* 'about the dreſſing-room, but ſhe *cannot remember whether it was* 'Charlotte or Miss Cumming *that told it to her*; and ſhe is certain, 'or at leaſt rather thinks, *ſhe was not preſent when Charlotte told it* 'to Miss Cumming.' The key-hole is mentioned; '*but ſhe cannot* 'be certain whether it was Charlotte or Miss Cumming that told her.' Something was ſaid about looking at the petitioners when Charlotte brought in the kettle; and ſhe thinks this was ſaid by Charlotte, '*but ſhe cannot ſay.*' '*She does not know*' whether Charlotte was preſent or not. Then, 'Interrogated, *When and by whom was* 'the witneſs FIRST *informed of the purſuers' improper conduct?* de- 'pones, *By Miss Cumming one morning in their bed room*, but ſhe can- 'not be certain as to the time. Interrogated, depones, That Miſs 'Cumming *frequently* talked to her on that ſubject.' Here is the calumny once more traced directly to Miſs Cumming. 'Interro- 'gated by Lord Meadowbank, when Miſs Cumming *firſt* told the 'witneſs about obſerving ſingular behaviour between the purſuers, 'Did ſhe expreſs to the witneſs that ſhe was doubtful what to un- 'derſtand about it? depones, That Miſs Cumming firſt aſked the 'witneſs if ſhe had been awakened, and then told her certain par- 'ticulars, which the witneſs ſaid ſhe did not underſtand; *but Miss* 'Cumming *ſeemed to the witneſs to underſtand what they had been* 'doing.'

State, p. 108. C, &c.

—— p. 111. B, C.

—— p. 113. H.

At laſt it appears quite diſtinctly that the witneſs had no material converſation with Charlotte at all. She firſt ſays, 'That 'the ſcholars were forbid to ſpeak to Charlotte, except upon ne- 'ceſſary occaſions, and *therefore the witneſs did not often ſpeak to* 'her.' Then, 'Interrogated, Did the witneſs ever hear Charlotte 'the maid deſcribe the conduct of the purſuers, in ſuch a manner 'that the maid's deſcription led the witneſs to think their conduct 'was indecent, independent of Charlotte's comments or opinions 'on the ſubject? depones, *That the witneſs had* VERY LITTLE *con-* '*verſation with Charlotte*; BUT WHAT MISS CUMMING TOLD THE 'WITNESS, SHE CERTAINLY THOUGHT EXTREMELY INDECENT.' At length, 'upon the depoſition being read over to her, *the wit-* '*neſs deſires it to be added*, that at that place where ſhe ſays that

—— p. 112. C.

—— p. 114. H, l. 115. A.

—— p. 115. E, F.

'*Charlotte* talked about the purſuers ſo often, that ſhe means to 'ſay, *either* that Charlotte the maid ſpoke ſo often, OR SHE HEARD 'SO OFTEN FROM MISS CUMMING ABOUT WHAT CHARLOTTE SAID.' There cannot be more diſtinct evidence, to ſhew that Miſs Stirling is really not certain that any one thing was ſaid to her by Char-

State, p. 111. G.

lotte, from which indecency might be inferred. '*She does not* '*know*' that Charlotte heard any thing material of her converſations with Miſs Cumming and Miſs Munro. '*She does not recollect*' that Charlotte ever ſaid any thing that implied ſhe had ſo heard. And the ſingle thing *ever* mentioned as having been ſpoken by Charlotte is, that they might as well take a man at once. But even as to this, it is not clear that it did not come from Miſs Cumming. Miſs Cumming had been previouſly telling her about Charlotte ſeeing the petitioners in the dreſſing-room; and it is long *after all this*, that Miſs Stirling *corrects her deposition*, ſaying in plain words, that ſhe meant that Miſs Cumming was conſtantly telling her what Charlotte ſaid. And with regard to an expreſſion ſaid to be uſed by Miſs Stirling herſelf, ſuppoſing it had the meaning which the defender alledges, though the word *beasts* is very often uſed without any ſuch meaning, it was evidently excited, not by any thing told by Charlotte, becauſe the witneſs expreſsly ſwears *ſhe never told her any thing* to infer indecency, but by the details of *Miss Cumming*.

In ſhort the teſtimony of Miſs Stirling juſt goes to confirm the certainty, that the whole ſtory was raiſed by Miſs Cumming, and propagated with infinite aſſiduity. It confirms nothing elſe. And if it appears that Miſs Cumming has been detected in falſehood throughout, Miſs Stirling's teſtimony juſt ſerves to illuſtrate the ſucceſs with which ſhe had perverted the mind of Miſs Munro.

There remains only the teſtimony of Charlotte Whiffin. This is a young woman of about nineteen, who had been the ſervant of the petitioners, and who was called as a witneſs for the defender. She is the defender's witneſs.

In the written ſtatement, there was this aſſertion: 'A ſervant-'maid in the houſe repeatedly ſaw Miſs Woods and Miſs Pirie in 'improper ſituations, and uſing indecent familiarities with each 'other.' This was left out of the condeſcendence; and even when the defender was forced to adopt what ſhe had ſtated as having been ſaid by this maid, ſhe contrived to leave out entirely the direct aſſertion of her having ſeen any thing. The petitioners are entitled

entitled to hold that the defender left this out, becauſe ſhe had diſcovered grounds for thinking it to be falſe. And accordingly, when ſhe called Charlotte Whiffin as a witneſs, ſhe made an effort *not to ask the queſtion at all*, whether Charlotte had ever ſeen any thing or not. But your Lordſhips not permitting this mode of examination, ſhe was obliged to aſk the queſtion, knowing, as her whole procedure evinced, that her former aſſertion was not true.

The petitioners are ſurely not called upon to inquire what the credit of this witneſs is. If ſhe has proved nothing againſt them, then ſo far as her teſtimony was thought material by the defender, ſhe has juſt failed in her proof; and that is the only conſequence. If one of her own witneſſes, who ought to know beſt, contradicts ſome of the reſt, it may detract from the proof of the defender; but it would be ſingular indeed, if it ſhould injure the petitioners.

But the defender ſeems to have this ſtrange notion, that if Charlotte denied upon her oath having previouſly *ſaid ſomething that was falſe in fact*, which other witneſſes ſtated her to have ſaid, this, concluded to be perjury in her, ſhould be taken as evidence of the guilt of the petitioners. Now the petitioners cannot, for their lives, conceive any thing more groſsly unjuſt than the manner in which this argument was attempted to be puſhed. For juſt attend to what it is.

Miſs Munro ſays, and ſo does the condeſcendence, that Charlotte had ſaid that ſhe ſaw the petitioners on the ſofa in the drawing-room through the key-hole. Miſs Cumming does not ſay this, though ſhe makes Charlotte ſpeak of looking through the key-hole, and alſo of ſeeing the petitioners on the ſofa ſeparately, of which enough has been already ſaid. Miſs Stirling does not ſay that *Charlotte* told her of the key-hole, though it was probably told to her by Miſs Cumming. Now, the ſtory as it was told in the condeſcendence, and by Miſs Munro, and even by Miſs Cumming, *is certainly a falſehood*, ſuppoſing Charlotte to have ſaid it. Your Lordſhips know, that it cannot be true. Suppoſing, then, that Charlotte told a falſehood in jeſt or earneſt to theſe girls, are your Lordſhips to condemn the petitioners, becauſe ſhe will not confeſs that ſhe did ſo, upon her oath? Nothing can be more groſs than this. The defender herſelf retracts the *facts* at firſt alleged; ſhe does not attempt to prove them; ſhe is forced to aſk the queſtions; her own witneſs negatives

negatives every one of them, and ſwears poſitively that ſhe never ſaw or knew any thing indecent in the conduct of the petitioners; and then the defender has the face to ſay, that this ſhall be a ground of condemnation to the petitioners, becauſe this witneſs is ſaid by the defender's informers to have aſſerted a knowledge which ſhe did not and *could not* poſſeſs! And the defender has overlooked one anſwer extremely obvious, that if ſhe had taken the pains to go to the houſe before propagating her calumny, or if ſhe had taken the pains to examine Charlotte, ſhe would have known that the ſtatement, whether made or not, was entirely falſe. With ſubmiſſion, therefore, ſhe is not now entitled to ſay, that becauſe Charlotte denies it upon her oath, ſhe was juſtified in her calumny.

But the petitioners have nothing to do with this witneſs. She was their ſervant; and it is not uncommon for lively young women to criticiſe the conduct, and make remarks in jeſt or earneſt on the conduct of their miſtreſſes. But they do aſſure your Lordſhips, that, from the time that the ſchool broke up, they made a point of never ſpeaking to Charlotte upon the ſubject; and excepting that the fact could not poſſibly be true, and that the defender ſhowed her knowledge of this, the petitioners were not aware what Charlotte would or would not ſay when ſhe was examined.

But though it is not the buſineſs of the petitioners, they cannot help thinking, that, upon a fair review of the evidence, there is no ground for holding that Charlotte ever did ſay the things imputed to her. There was nothing in her appearance to indicate falſehood. Throughout her examination, ſhe anſwered every queſtion with the utmoſt readineſs, and with no want of proper modeſty. There were none of Miſs Cumming's ſilences. And the defender has not been able to point out one ſingle inconſiſtency or contradiction in her whole depoſition.

But it is to be remembered, 1. That Miſs Cumming is proved to have pretended converſations with Charlotte, which never did take place, independent altogether of Charlotte's denial. It is proved by Miſs Munro, that ſhe pretended the converſations; and it is proved by Miſs Cumming herſelf, that they had never taken place. 2. That Miſs Cumming and Miſs Munro flatly contradict one another in the account which they give of what Charlotte ſaid; from which the fair inference is, that both ſtatements are falſe. 3. That Miſs Cumming has palpably invented a new ſtory

as told by Charlotte, the moment ſhe found that the key-hole was detected. 4. That Miſs Cumming was perpetually haraſſing Miſs Stirling with ſtories about what Charlotte ſaid, and making her believe them to be facts, while Miſs Stirling had ſcarcely any communication at all with Charlotte.

Now when theſe facts are ſet together, and your Lordſhips conſider, in the firſt place, that Charlotte has, with the utmoſt clearneſs and conſiſtency, ſworn that ſhe never ſaid any of the things alleged; and, in the ſecond place, that ſhe is *ſupported by the real evidence* that the thing could not poſſibly be which ſhe is ſuppoſed to have ſaid; there ſeems to be no ground in law or reaſon, on which to conclude that the falſehood is upon her ſide, and not upon the other. And your Lordſhips will more particularly remember, that Miſs Cumming will not recollect any one thing which Charlotte ſaid ſhe ſaw. She reſts upon this, that Charlotte *ſeemed to underſtand*. But the real truth, in all probability, is, that Miſs Cumming interpreted this underſtanding. Charlotte does ſtate, that ſhe remembers of Miſs Munro complaining of being tired; and if ſome of the other girls came in immediately, as Miſs Munro ſays, among whom muſt have been Miſs Cumming, unleſs it is all a falſehood, it is quite eaſy to ſuppoſe that Miſs Cumming, after being proved to have reported converſations that had no exiſtence, interpreted the remainder of the converſation by underſtandings and hints, in which Charlotte had a perfectly different meaning. Indeed, in converſations of this nature, in which indelicate words are avoided, it is quite eaſy to ſuppoſe, that ſuch an idea as that which Miſs Cumming had, might be made to appear to Miſs Munro, and even to Miſs Stirling, to be aſſented to by Charlotte, when the latter had never comprehended the idea at all.

And with regard to what has been ſtated by Miſs Stirling, the petitioners ſubmit, in the firſt place, that it is not at all clear that any part of it came directly from Charlotte. In the ſecond place, moſt of it is extremely indefinite: *Something about* the dreſſing-room,—*ſomething about* the key-hole, &c. But, in the third place, though Charlotte deponed generally that ſhe had never told any of the ſcholars that ſhe had obſerved any thing improper in the petitioners' conduct; it is not at all impoſſible, that if ſome of the particular expreſſions alluded to had been mentioned to her, ſhe might have recollected ſomething concerning them.

But let it be ſuppoſed that Charlotte had uſed the expreſſion to Miſs Stirling, the only one on which ſhe fixes,—let it be ſuppoſed, that ſhe had ſpoken diſreſpectfully of the petitioners, and that, either from want of recollection, or from unwillingneſs, ſhe has not choſen to admit this, the petitioners aſk your Lordſhips, what is the fair inference from it? The calumny has been diſtinctly traced to Miſs Cumming as the author. *She* firſt put it into the mind of Miſs Munro. *She* firſt ſpoke of it to Miſs Stirling, and *she* was perpetually talking about it afterwards. If Charlotte uſed diſreſpectful expreſſions, is not the fair inference that ſhe alſo was infected *by Miss Cumming?* She never ſlept with either of the petitioners: She could not ſee through a keyhole that did not exiſt: And if a young woman, apparently of a lively turn, has ſpoken ſome nonſenſe in conſequence of the hints of Miſs Cumming, your Lordſhips will ſurely never conclude, without one veſtige of proof, and againſt her ſolemn oath, that the petitioners had been guilty of an unnatural crime.

The petitioners cannot recapitulate their argument even in a ſingle word. But before concluding, the petitioners muſt take notice of one remark that was made. It was ſaid, that Miſs Munro's teſtimony might have been enlightened by the examination of Miſs Cunninghame and Miſs Edgar; and at leaſt one of your Lordſhips ſeemed to think that it was incumbent on the petitioners to have brought them forward. The petitioners humbly ſubmit, that the obligation clearly lay the other way; and Miſs Munro is a *ſingle* witneſs to the facts in Miſs Woods's room. But, with great deference, this is rather hard. The petitioners underſtood it to be the unanimous opinion of thoſe of your Lordſhips who attended the proof, that it was incumbent on the defender to ſupport the teſtimony of Miſs Munro if ſhe could, by the other young ladies in the ſame room; and that if ſhe did not, it would be held that ſhe could not ſo ſupport it. On the other hand, the petitioners proved by Lady Cunninghame, in the firſt place, that Miſs Cunninghame never had ſaid that ſhe obſerved any impropriety or heard any thing of the kind; and, in the ſecond place, that if ſhe had been examined, ſhe muſt have been turned out of the ſchool into which ſhe had been with great difficulty received. And the petitioners were in the ſtrongeſt terms aſſured of the ſame thing in regard to Miſs Edgar. Under theſe circumſtances, and relying upon the opinion of the Court in that point, the petitioners humbly thought there was no call upon them to do ſo very great

an injury to theſe young girls. And they ſubmit, that it would be great injuſtice now to admit an argument, proceeding on a ſuppoſition ſo perfectly different from the fact, as if the petitioners had avoided examining them upon any idea that they would have given the leaſt confirmation to the ſtatements of the other witneſſes of the defender.

May it therefore please your Lordships, to alter the interlocutor reclaimed against, and to decern in terms of the libel; and to find expences due.

According to Juſtice, &c.

JOHN CLERK.

JAMES MONCREIFF.

SECOND DIVISION.

FEBRUARY 22. 1812.

ANS.—Dame HELEN CUMMING GORDON,

TO THE

ADD. PET.—Misses WOODS & PIRIE.

MACKENZIE & INNES, W. S. Agents for Respondent.

JAS. BALFOUR, W. S. Agent for Petitioners.

Mr MACKENZIE, Clerk.

ANSWERS

FOR

Dame HELEN CUMMING GORDON, relict of the deceased Sir Alexander Cumming Gordon, of Altyre and Gordonstone, Baronet;

TO THE

ADDITIONAL PETITION of Miss MARIANNE WOODS, and Miss JANE PIRIE, lately residing at Drumsheugh, near Edinburgh.

THE petitioners, in the introduction to their elaborate and eloquent pleading, have described the calamity which has befallen them, and the distress which they have endured on account of it, in very natural and affecting terms. The magnitude of that calamity, supposing it to exist in the full extent in which they have chosen to represent it, is but too apparent, and his heart must be callous indeed, who can reflect upon it without emotion. That two young and unprotected females, born of creditable

ditable parents, possessing an unblemished character, and looking forward to an honourable and independent place in society, should be compelled to relinquish their employment, have their fairest prospects blasted, and their respectability for ever destroyed, is an event calculated to inspire the deepest regret and commiseration. Nor is the fate of the petitioners on this unhappy occasion to be exclusively lamented. Every one must sympathise with the parents and relations of the young ladies who attended this seminary; trembling lest their approach to the seat of contagion, should expose them at some future period to unmerited reflections. Besides, the offence laid to the charge of the petitioners is of such a nature, that the mind turns from its contemplation with disgust. It is painful to imagine, that a practice so injurious to the honour and delicacy of the female sex, should have existed in a respectable walk of life, and in a society pre-eminent for correctness of manners. It is scarcely possible to suppress the desire of believing the story to be a malicious fabrication, and not to experience some resentment against the individual who asserts its truth, whatever may be the occasion or motive.

That the feelings which have been described, are natural and amiable, the respondent is ready to admit, and she is fully aware of their tendency to create a strong and deep-rooted prejudice against her cause. It is not easy to sit down to a cool and dispassionate investigation of a charge, with an earnest preconceived desire that it should be disproved. Every person in that frame of mind, is but too liable to shut his eyes against the light, to grasp at every shadow of doubt, or difficulty which is conjured up, and to struggle against conviction, even when the evidence is irresistible. His fancy is heated by declamation; he mistakes the most contemptible cavils for ingenious reasoning; and the grossest mistatements and misrepresentations appear in his apprehension a fair and candid exposition of the case.

But the respondent knows, that it is impossible for your Lordships to be so misled. You are too well acquainted with your duty, and too conscientious and habitual in its discharge, to suffer your opinions to be warped by feelings of any description, and more especially, by feelings which arise from narrow and imperfect views. Much as you may pity the situation of the petitioners, as it may be affected by the interlocutor under review, and much as you may regret the existence of practices similar to those which have been imputed to them, you will not confine your attention to that side of the picture exclusively; you will

not

not forget, that the respondent also has claims to assert, less specious and affecting perhaps than those of her opponents, but of deep importance, notwithstanding, to herself, to her family, and to the public. She was at one time the most active and zealous of the petitioners friends; she exerted all her influence to serve them, and confided three of her grandaughters to their care. If they have been guilty of the misconduct which is laid to their charge, and which your Lordships, after the most diligent and painful investigation, have found to be proved; consider how great an injury they have committed against her and her family. In violation of a sacred trust, they have endangered the purity of Miss Cumming's mind. They have inflicted upon her the certain misfortune of having witnessed their indecencies, and of being conscious that the world knows she witnessed them. They have held up the respondent as a rash and malicious calumniator. They have dragged her into a painful and disgusting lawsuit, and coupled her name with a subject offensive to every delicate ear. They have compelled her, in her justification, to wound the feelings of the innocent young women brought forward in evidence, and of their respectable relations and friends. Finally, they now attempt to destroy the character of the unfortunate girl who was the involuntary observer of their offence, by the falsest and foulest aspersions,—by denouncing her as a monster, polluted, malevolent, insidious, and perjured beyond example,—and by charging her with crimes, in comparison to which their misconduct, though proved to the fullest extent, is venial and harmless. And this is done to enrich themselves at the expence of a benefactress whom they have injured; and to regain a place and office in society of which they are unworthy, and from which the interest of public morals imperiously requires that they should be excluded. These are considerations which will not escape the notice of your Lordships; and nothing more is necessary, to correct the partiality of the first impressions which the case has a tendency to produce, and to counteract the artful and delusive appeals to feeling, with which every page of the petition is filled.

Mr Cumming, the respondent's eldest son, died in India about the year 1800, leaving a natural daughter, Jane Cumming, in early infancy, to the care of Mr Palmer, a gentleman of established reputation, in Bengal. By Mr Palmer she was successively placed, immediately after her father's death, at two boarding-schools, both of the greatest respectability, at Calcutta. In the year 1808, she

she was sent over to Britain, having left India some months before she attained the age of eight years. As soon as she landed, the respondent had her brought to Scotland, where she was received as an inmate of the family, and ever since that period, she has been educated by the respondent, or immediately under her eye. Miss Charles, who was governess to the respondent's daughters, and who discharged the duties of that situation for many years, entirely to her satisfaction, having afterwards established a boarding-school at Elgin, Miss Cumming was placed under her care. As that town is in the near neighbourhood of Altyre, the respondent and her family, when in the country, had constant and almost daily opportunities of seeing her, and during the holidays she was always at home. To her, as to every girl under her care, the respondent knows that Miss Charles conscientiously and ably discharged her duty. It is true, that Miss Cumming did not distinguish herself by brilliancy of talents, or a rapid proficiency in her education; but Miss Charles uniformly represented her as an innocent, amiable and upright child. Of the justice of that character, the respondent and all her family had the most complete opportunity to be satisfied; and so sensible did they become of her merits, that it was determined to make an important change with regard to her place in society. It was originally intended, that she should be bred to business as a mantuamaker or milliner, that she might gain a livelihood by her own exertions, in a reputable but inferior station in life. But the increasing esteem and attachment of the respondent, and of all her children, occasioned that plan to be given up, and it was determined that she should be introduced into the world as a daughter of the family.

When that resolution was formed, it was thought proper to place her at an Edinburgh boarding-school, that she might have the benefit of masters, and various other advantages which could not be obtained in the country. The respondent had no hesitation with regard to the choice of a seminary. Miss Margaret Pirie, sister of the petitioner, Jane Pirie, had been governess in the family of Lady Dunbar, the respondent's daughter, and had conducted herself in that situation in a very exemplary manner. The respondent and Lady Dunbar, who conceived, and still conceive themselves obliged to her on that account, felt deeply interested in the success of her sister, the petitioner, who at that time had just taken up a boarding-school in partnership with the other petitioner Miss Woods. The respondent had previously recommended

mended the school to her friends in the warmest terms, as will appear from the evidence to be afterwards quoted, and she has reason to know that in consequence of those recommendations the petitioners obtained several of their pupils. But it gave her peculiar pleasure to confer a still more important benefit upon them, by entrusting Miss Cumming to their care; under which she was accordingly placed, when they had as yet but one boarder. A few months afterwards, two of the Miss Dunbars were also sent to Drumsheugh in the capacity of day-scholars.

In the month of May 1810, the respondent went to the country, leaving Miss Cumming with the petitioners, and entertaining the full belief that she was as safe under their protection as her own. Miss Cumming continued at school during the summer, and accompanied the petitioners, along with Miss Cunynghame, another boarder, to Portobello, whither they went for the holidays, in the month of August. The petitioners have said, that they hesitated to receive Miss Cumming into their house, because she was a girl of colour. There is something so extravagant in that assertion, that it seems unworthy of an answer. Your Lordships, who have seen her, will know that the tinge is just perceptible. That any boarding-school would object on that account, to the relation of a respectable family, who had lived from her infancy under its eye, and who was to be brought forward in the world as one of its members, is a thing not very likely to happen; but that the petitioners, who had but one boarder at the time, who were connected in the manner already described with the respondent and Lady Dunbar, and who looked up to them for countenance and support, should consider the charge in any other light, than a favour of the greatest magnitude, must appear to your Lordships utterly incredible.

While Miss Cumming continued under the care of the petitioners, it is not alleged that they hinted to the respondent, or any of her friends, the slightest disapprobation of her character or conduct; and it is supposed they will not deny, that in the course of the summer, they expressed to Mrs Mackenzie their entire satisfaction with her in every particular, though the fact could not be established by the evidence of that lady, because she is sister to the respondent. Miss Cumming, on the other hand, was delighted with her removal from Elgin, to the school of the petitioners, because it had been held out to her as the reward of her good behaviour, and the means of qualifying her to be introduced

into society as a lady. On the other hand, she dreaded nothing so much as being taken from the school, because it would have indicated the intention of her friends that she was to return to her original destination; and accordingly it was so represented to her, as a stimulus to attention and diligence. How much she was pleased with the school, and how much she was attached to the petitioners, particularly to Miss Woods, will appear from the evidence to be laid before your Lordships in the sequel.

In the month of November, the respondent returned to Edinburgh, and was immediately visited by her grandaughter, who remained with her during the evening. Miss Cumming had been early taught to unbosom every thought of her heart to the respondent; and in the course of conversation, she mentioned the practices which she had witnessed, the impropriety and indecency of which she seemed fully to comprehend, although an inadequate judge of the full extent of their criminality. The respondent was lost in confusion and horror. It was a story not of reports which Miss Cumming had heard to the prejudice of the petitioners, not of ambiguous circumstances, which admitted of explanation, or where there was the smallest possible room for misunderstanding, or mistake; it was a minute detail of obscenities, acted and spoken in her presence, and in her bed. In confirmation of her statement, she mentioned, that her companion Miss Munro, had witnessed scenes of a nature exactly similar; and that Charlotte Whitlin, the maid, reported that she had been the spectator again and again of the same practices. On this occasion, the respondent had but one alternative presented to her:—either a young person whom she had known from her infancy, and in whom she had never seen the smallest deviation from innocence and truth, had at once become an adept in a species of obscene knowledge, the most extraordinary and rare; had contrived a marvellous and unaccountable falsehood, which could not escape almost immediate detection, and had been actuated by the most unprovoked and diabolical malice against two individuals, who had never injured her, and for whom, even at the time she was expressing sentiments of tenderness and regret;—or these unfortunate women had addicted themselves to the indulgence of an odious propensity, or at least were guilty of indecent practices, which resembled it, and which were equally contaminating to the children who witnessed them.

When such an alternative was proposed to the respondent, it is easy to anticipate what she or any parent in her situation would

would do. She gave the most implicit credit to her granddaughter, and believed from the first, as she does to this hour, that, whatever might be the merit of the petitioners in other respects, they had fallen into a vicious habit, and committed the indecencies which Miss Cumming related. She determined, without an instant's hesitation or delay, to remove her grandaughter from the school; but on so sudden an emergency, she felt desirous of advice and assistance with regard to the mode of proceeding. Miss Cumming was kept at home that night; but next morning the respondent allowed her to return to school, knowing, that through the day, there was little to be apprehended; and in the mean time, she communicated the matter to her daughter Mrs Forbes, on whose judgment she has the most perfect reliance. Miss Cumming was sent for a second time, and minutely interrogated with regard to all the circumstances which had taken place, when she gave precisely the same account that she had done before; and it was confirmed by one of the Miss Dunbars, who had seen nothing herself, but who had heard the stories of Miss Munro, and Charlotte Wardlaw. Thus, the respondent obtained the testimony of two witnesses with regard to the fact; and if a doubt could have existed in her mind, after such information, she must have been sceptical indeed. Miss Cumming was accordingly brought home in the evening of that day, and intimation given to the petitioners the day following, that she was not to return.

The respondent and her family had recommended the petitioners school to two individuals, whose children had afterwards been sent there,—to Lady Cunynghame directly:—and to Mrs Anstruther, through the medium of her sister-in-law, Mrs Campbell of Stonefield, who had applied to them by Mrs Anstruther's desire upon the subject. Under the circumstances which had occurred, the respondent conceived it to be a duty clearly incumbent upon her to mention to those two ladies, that she had reason to be dissatisfied with the school; and with her own opinion that of her daughter Mrs Forbes entirely coincided. If, after having removed her grandaughter, she had not warned these two ladies of the danger to which their children, through her means, had been exposed, she would have held herself responsible for the ruin which seemed to inevitably await them, along with every young lady in the house. Accordingly, she wrote to Mrs Anstruther on the evening of Wednesday the 14th of November, the day on which she removed her own grandchildren, mentioning

tioning that she had done so, and that she would state to Mrs Anstruther the reason. Next day she wrote in similar terms to Lady Cunynghame, and advised her also to bring home Miss Cunynghame; but before the last-mentioned note was written, the respondent had heard the whole details of Miss Munro's statement, who, in the interim, had disclosed all that she had witnessed to a female friend; and those details agreed exactly with what Miss Cumming had previously communicated, as the information which she had received from that young lady. Soon afterwards, Lady Cunynghame called upon the respondent, and having pressed her in the strongest terms to relate the particulars which she knew to the prejudice of the petitioners, the respondent, after much reluctance, and an interval of some hours, during which she took the opinion of her daughter upon the propriety of the disclosure, mentioned in substance, but in general terms, what her grandaughter had witnessed, entreating that the strictest secrecy might be observed with regard to it.

With the exception of her daughter Mrs Forbes, whose confidential advice and assistance she considered of the last importance in such a distressing emergency, and of Mrs Anstruther and Lady Cunynghame, to whom she related the circumstances, in discharge of what she conceived to be an indispensable duty, the respondent mentioned the subject to no individual whatever. The removal of Miss Munro, and Miss Stirling, was occasioned entirely by the information which they themselves communicated to their friends. The extent and nature of Mr and Mrs Forbes's interference with regard to these two young ladies, will afterwards be considered, when, the respondent trusts, she will satisfy your Lordships from the evidence, that they acted with the most meritorious prudence and reserve.

But although Lady Cumming is not responsible for the circulation of the story, since she told it to none but those to whom, whether true or false, she was entitled and bound to disclose it, your Lordships will immediately perceive, that it could not be long concealed, after having been necessarily confided to so many individuals. As soon as it transpired, the remaining boarders were taken from the school by their friends; and the petitioners being reduced to the necessity either of acknowledging that they were guilty, and abiding the consequences, or of boldly asserting that the whole report was a malicious falsehood, fabricated to accomplish

complish their ruin, adopted the latter alternative. Their choice was probably determined, partly by a conjecture, that as Miss Cumming was the person first removed from the school, she alone had been the witness of their misconduct, and partly by the hope, that the respondent would be intimidated by the threats of judicial procedure, and submit to the imputation of being the dupe of artful malignity, rather than be dragged into an investigation of a nature so disgusting and painful.

In the firm conviction, however, that nothing but the truth had been reported to her, and that she had acted in consequence of that information, as was incumbent on a parent, and on a friend, she would not shun this calamity, afflicting as she considered it, by compromising her own respectability, or the character of her grandaughter. The present action of defamation and damages was accordingly instituted against her by the petitioners, and the proceedings took place, which she will immediately mention

The respondent is accused of having proceeded with culpable precipitancy, and unnecessary harshness in removing her grandchildren from the school, and suggesting to Lady Cunynghame and Mrs Anstruther, that they should follow her example. It is said, that before she took so decided a measure, she should have conversed with the petitioners, informed them of what was laid to their charge, and heard their justification; that she should have interrogated the maid, examined the apartments, and entered into various other investigations. This subject requires particular consideration; but it properly belongs to that branch of the cause, where the respondent is to vindicate her conduct on a ground independent of the truth of the statement in the condescendence, namely, by maintaining that the petitioners have failed in the proof of their libel. The subject is mentioned at present, only because it occurs in the natural order of the narrative, and if it were passed in silence, your Lordships might imagine, that she intended to shrink from the discussion of it altogether.

The summons was executed early in November 1810, and the respondent, at the request of the petitioners, having readily passed from the *inducia*, it was immediately afterwards called in Court, and enrolled before Lord Meadowbank, as Ordinary. Defences were given in, bearing, That the respondent had learned from unquestionable authority, that the petitioners had practised together acts of gross immorality and shameful indecency, and that their guilt was aggravated by the occasional commission of these

offences in the presence of the young ladies entrusted to their charge. On that ground she justified her conduct in removing her own grandchildren, and acquainting those persons with the circumstance to whom she had recommended the boarding-school. As all defences, by the practice of the Court, are printed, she thought it right to confine herself to this general statement; but she offered, at the same time, to specify the facts alleged as minutely as might be required.

It occurred to all the counsel for the respondent, that as the question was ill fitted for public discussion, an order would be made on Lady Cumming to put in a special condescendence of what she averred and offered to prove. So persuaded were they of this, that not one of them brought his memorial or instructions to Court on the day when the cause was first called before the Lord Ordinary. It was accordingly suggested to the counsel for the petitioners, that this should be the mode of procedure, a proposal in which they appeared entirely to acquiesce; but a few minutes before the case came on, they signified, that they would require the respondent to state her defences at length. The Lord Ordinary having desired to hear parties in private, her counsel related to his Lordship, from memory, the leading facts which had come to the respondent's knowledge; and the narrative then given, according to their recollection, was precisely the same in substance with that which is to be found in the printed statement afterwards laid before your Lordships by the Lord Ordinary's appointment. But, although this narrative had not been absolutely correct, though circumstances had been erroneously omitted, added or altered, the error would have been immaterial, and the cause of it apparent. Counsel were professedly giving a mere outline of the case, as preparatory to a future condescendence; it had been called for unexpectedly, and was given from recollection alone. In the detail of a multitude of facts, the least of which, if proved, was much more than sufficient to make good the defence, what did it avail in that stage of the cause, (a pleading, not on evidence, but relevancy,) though one among the number had been accidentally misconceived or misrepresented.

The respondent's counsel had the misfortune to find, that the statement made to the Lord Ordinary produced an effect upon his Lordship's mind entirely different from what they had anticipated. He expressed at once a decided opinion, not only that the whole story was a fiction, but that it was so incredible and absurd, that it ought not to be made the subject of proof. It appeared

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to his Lordship, that no woman would act as the petitioners were represented to have done, except for the purpose of sensual gratification, and that it was physically impossible that such gratification could be procured in the manner described, unless one of the parties at least was organized as an hermaphrodite. His Lordship, therefore, signified an intention of refusing to allow the respondent a proof of her defence. unless she would aver and offer to establish by competent evidence, that the petitioners, or one or other of them, had a preternatural conformation of parts. But his Lordship afterwards appointed the cause to stand over for a further hearing.

See Page 20.

In the humble apprehension of the respondent's advisers, the Lord Ordinary's view of the question appeared incorrect.

It occurred to them, that if a proof were allowed, such a case might be established, as, while it amounted to gross immorality and indecency on the part of the petitioners, did not necessarily indicate the indulgence of sexual feelings; for example, they might have mimicked the postures and motions of the venereal act from mere turpitude of imagination, or in the practice of licentious buffoonery. If this was the *species facti*, it would fall strictly within the limits of the defence, and be indisputably relevant in justification, while any part of the statement, apparently incompatible with it, might have arisen from the misconception or prejudice of the witnesses, and of consequence would not be proved. But, farther, there seemed to be nothing incredible in the petitioners seeking a sensual gratification, or physically impossible in their finding it, by the means in question, without the supposition of either of them being peculiarly organized; which peculiarity might however exist in the case, though the respondent knew nothing of it, and therefore could not allege it. The existence of the propensity, and the prevalence of its indulgence, have been recorded by writers of every age and nation, by historians, moralists, physicians and lawyers; and there is scarcely a work professedly licentious, in which it is not treated of at large.

The cauſe came to be heard before the Lord Ordinary a ſecond time, when the facts offered in ſupport of the defence were again related in detail; aud the line of argument naturally aſſumed on the part of the reſpondent was, that nothing impoſſible or incredible was involved in the ſtatement, although the facts alleged ſhould infer that the gratification of appetite was intended. It was the buſineſs of her counſel to ſhew that the whole ſtatement

was

was relevant, and that a proof of the whole ſhould be allowed. On the other ſide of the bar, the idea thrown out by the Lord Ordinary was warmly enforced; but it was beſides contended, in a long and argumentative pleading, that truth is no juſtification of a libel; on the ſtrength of which maxim, and of various deciſions or *dicta* of this Court, the petitioners ſtrenuouſly reſiſted a proof.

At this debate the Lord Ordinary delivered an opinion at great length, the ſubſtance of which is contained in the notes which his Lordſhip afterwards laid before the Second Diviſion of the Court. It chiefly went on the phyſical and moral impoſſibilities of the reſpondent's ſtatement, and the impropriety of her conduct, and that of her counſel, in allowing it to be made the ſubject of proof. In ſo far as the arguments contained in theſe notes have been adopted by the petitioners, or are now material to the iſſue, they will be conſidered in their place.

The Lord Ordinary appointed the reſpondent to put in a written ſtatement to the Court of what ſhe averred and offered to prove, which was accordingly done, the ſame *ſpecies facti* being detailed which had twice been laid before the Lord Ordinary in the *viva voce* pleadings; and the Court having advised that ſtatement, with his Lordſhip's notes, and heard counſel ſhortly on the caſe, appointed a condeſcendence to be given in by the reſpondent; which order was ſoon afterwards obtempered.

It is aſſerted by the petitioners, that the firſt ſtatement made to the Lord Ordinary differed materially from the ſecond: that this again differed from the written ſtatement put in to the Court by the appointment of his Lordſhip; and that the laſt was ſtill more different from the condeſcendence. The reſpondent entreats your Lordſhips to obſerve to what extent this aſſertion is well founded, with what degree of candour it is made, and how far, ſuppoſing it to be true, it bears upon the caſe in its preſent ſhape. Undoubtedly, in one article, and that an important one, the condeſcendence was narrower than all the preceding ſtatements. Until that paper was given in, it had been uniformly averred, that Charlotte Whiffin, the maid, had ſeen the petitioners in improper ſituations, two of which were ſpecified, namely, one which occurred in the drawing-room, and another in the bedchamber; but, in the condeſcendence, it was ſaid only, that the

maid-ſervant

maid-servant had related that she had seen these improprieties. The reason of the variation was this. The maid had reported to Miss Cumming the particulars of those scenes, of which she said she had been an eye-witness, in the manner stated by Miss Cumming; she had told the same thing to Miss Munro, in almost the same words, as sworn to by Miss Munro and the account of that young lady was communicated to the respondent through the channel formerly mentioned. Lastly, the maid had told one of those stories to Miss Stirling of Kippenross, or a story nearly to the same effect; at least, that was the information which the respondent received, as appears from the following paragraph in Miss Stirling's letter to Miss Cumming, produced on the requisition of the petitioners, and printed in the State in process: 'All I know of the affair, you, Miss Munro, 'and Charlotte the maid, told me; and I said I could not under-'stand what it was they did, nor do I at this moment, and you 'said that you could not tell me, but that when your grand-'mamma came home you would tell her. The maid, you may 'recollect, told us, that she caught them one morning in bed to-'gether in the dressing-room, and that Miss Pirie jumped out 'of bed, with her face as red as scarlet; she also said, that they 'might as well take a man at once.' The respondent received the same information, or information to the same effect, from one of her grandaughters, the Miss Dunbars, although this is not in evidence, as the petitioners have not chosen to call these young ladies themselves, and have prevented the respondent from calling them,—a circumstance on which some comments will afterwards be offered. Having not the least suspicion that this servant girl would perjure herself, as she has since done to the unanimous conviction of your Lordships, the respondent stated as facts what she *bona fide* believed then, and still believes to be true, and what she never doubted she would be able to prove. But the petitioners having detained the maid in their service after their scholars had left them, and she being a common servant, recently arrived from the south of England, to which she has since returned, without friends or connections of any kind in this country, it is not surprising, that in a few weeks she was ready to contradict every thing which she had affirmed before. Accordingly, the first time that the respondent's agent conversed with her, she declared that she had never uttered a word to the prejudice of her mistresses to any one of the four young ladies, who had agreed in declaring the contrary, nor had such an idea ever crossed her imagination.

gination. This interview did not take place till after the condescendence had been ordered by your Lordships, with a view to proof, when she was publicly sent for to be interrogated; for, previous to that period, the respondent felt it indelicate to have any communication with her, lest it should appear an attempt to make her betray the interest of the petitioners, whose confidential servant she was. Her tergiversation, of consequence, made it necessary to narrow the condescendence; but the variation was utterly immaterial, since the original statement was perfectly warranted, and perfectly consistent with *bona fides*, while enough, and much more than enough, was left for all the purposes of the respondent's defence.

But it is said, that the highly coloured detail given in the first statement was afterwards omitted, and that the story, every time it was told, declined in the magnitude of its averments. One should think, that the scenes described in the condescendence, and if the witnesses are believed, completely established by the proof, remain still of a dye sufficiently deep. But what is this softening of the shade, this extenuation of the narrative, of which the petitioners complain? The whole matter, it is said, Pet. p. 14. was in the first statement 'represented in such a light, as to 'make the Lord Ordinary, and to make the petitioners' counsel 'fully believe, that it was meant to be asserted, that Miss Cum-'ming had seen with her eyes the facts which were so detailed.' This assertion is to the highest degree unfair and uncandid, after the Lord Ordinary himself has explained in his notes, that the mistake originated from the idea which he affixed to the word 'witness,' and which, with submission, was an inaccurate one, namely, that it imported an eye-witness. Nothing more was meant to be stated, than that Miss Cumming perceived certain things which were acted in her presence, and in her bed; and with the strictest propriety she is said to have witnessed them, though not by the sense of sight. But, whether the phrase was proper or not, it is unjustifiable in the petitioners to misrepresent the pleadings, by attributing to wilful error what was the effect of mere misconception. It is said, that the circumstance of the petitioners being hooted at by women at the Water of Leith was abandoned after the first statement; and it certainly was so, because it turned out, upon inquiry, to be a second-hand report, communicated through the medium of Charlotte Whiffin, and which it did not appear that she could have sworn to

be

but as a hearsay, even if she had been disposed to tell the truth.

These are the variations of which so much has been said in the answers to the condescendence, in the pleadings at the bar, and finally, in the narrative to the petition. If they are brought forward to create a prejudice either against the respondent, or the witnesses who are the sources of her information, they must fail completely of that effect. Was it ever heard of, that in a preliminary opening of a case, which is rather intended to convey a counsel's impression of the facts, than a rigorous detail of the particulars to be proved, the omission or addition of something superfluous or unimportant must shake the credibility of the party or his witnesses. Even in a criminal action, where the prosecutor has the advantage of precognoscing the witnesses, and in which the most rigid attention to form is requisite, it is not incumbent upon him to prove all the details of his libel; nor is a variation between what is there set forth, and the evidence given, considered as the slightest reflection upon his accuracy, or the veracity of the witnesses, provided the substantial part of the charge be made out. In the present case, the witnesses were necessarily, at the outset of the business, interrogated by females, and their information conveyed by a circuitous channel to counsel; and yet it is pressed upon your Lordships, that a statement unexpectedly called for, and made from recollection alone, cannot be varied in the most unimportant particular, without throwing discredit upon the whole cause. It so happened, that not one variation did take place, which cannot be satisfactorily accounted for; but if it had been otherwise, the present attempt to create an undue impression against the respondent, would not have been the less apparent.

The condescendence was followed by elaborate answers, in which, after enlarging on the topics already alluded to, the petitioners gave a description of the premises at Drumsheugh, and in particular, they stated that there was no key-hole in the dining-room door, which they represented as demonstrative proof, that the story said to come from Charlotte Whiffin was false. The respondent will consider the argument upon the key-hole, when she comes to Miss Cumming's evidence upon the subject.

The petitioners arrogate to themselves a great degree of merit, because, as they allege, they consented that a proof should be allowed

lowed, and because they did not call Miss Cumming and Miss Munro as defenders, to preclude their examination as witnesses. But they appear to forget, that on both the occasions when the case was argued before the Lord Ordinary, they opposed a proof with all their might, not only availing themselves of his Lordship's ideas on the physical and moral improbability of the defence, but taking shelter under the maxim. *Veritas convicii non excusat*, a plea which received no countenance from his Lordship. If, in their answers to the condescendence, they withdrew this opposition, it was not until they had previously had abundant opportunities of ascertaining the opinion of your Lordships, that the proof was competent.

As for what they are pleased to term their *forbearance* in not making Miss Cumming and Miss Munro parties to the suit,—'the 'confidence displayed in disdaining to take a fair advantage;'—it is not supposed that your Lordships will give them much credit on that account. The petitioners were accused of indecent practices carried on in the night, and in the beds of two young ladies, who were offered as witnesses of the fact. If both or one of these ladies, from whom the petitioners could have obtained no pecuniary reparation, had been called as parties, manifestly for the purpose of disqualifying them, is it possible that the most complete failure of proof on the part of the respondent, would ever have entitled them to a judgment for damages, or would such a judgment, though pronounced, have ever re-established their character? If they have not betrayed to the respondent, and to the world, the most unequivocal indication of conscious guilt, to what are they beholden but to the prudence of their advisers?

After advising the condescendence and answers, and inspecting the premises at Drumsheugh, your Lordships allowed a proof to both parties, which was taken by the Court as Commissioners. Counsel were then heard at great length on the import of the evidence, when the interlocutor under review was pronounced, sustaining the defences, and assoilzieing the respondent.

Dated 25th, signed 29th June 1811.

The petitioners, at the very commencement of their argument, mistate the defence of which the respondent has been allowed a proof, and attempt to drive her into an issue different from that which has been actually joined. It is said, that she has undertaken to establish the crime of *venus nefanda*, at least the existence of unnatural passions, and the performance of unnatural

act-

acts on the part of the petitioners, and if she cannot satisfy your Lordships, that one of the petitioners went to the bed of the other, with the intention of obtaining venereal pleasure, they must prevail in this action. Hence, it would be quite immaterial to the issue, though they were convicted of the foulest indecencies, provided always those indecencies were practised from any other motive than *lust*. Nothing, it is said, can be more obvious, than that the essence of the charge against the petitioners lies in an imputation of *an intention* to seek the gratification of the venereal appetite with one another. Afterwards, it is added, the question is upon the evidence, *whether there was any such intention or not*.

In direct opposition to what is thus asserted, the respondent maintains, that the question of intention is *not* of the essence of the charge. In her defence against the libel, she stated generally, that she had learned from unquestionable authority, that the petitioners had practised acts of gross immorality and shameful indecency; and of that charge which she specificated in her condescendence by an enumeration of various acts, a proof was allowed. If, then, the respondent can prove all those acts, or such part of them as amounts to shameful immorality and gross indecency, the defence is made out. She is not entitled to travel out of the condescendence, to inquire into facts, which, however immoral and indecent, make no part of her specification. Though drunkenness, fornication, or adultery were proved, the respondent could not take notice of such offences; any more than in the cases put in the petition, a person accused of sodomy could be convicted of fornication, or a schoolmaster accused of rape, could be convicted of irregular attendance at school. But if immoral and indecent acts set forth in the condescendence are proved, it matters not at all to the issue, from what motive they were committed; whether to gratify a venereal appetite, in the vain attempt to excite that appetite, from mere thoughtlessness and buffoonery, or from any other imaginable cause. The difference of motive may undoubtedly produce a corresponding difference of moral turpitude in the offence; but if the acts amount to the charge made in the defence and condescendence, the respondent has accomplished what she undertook.

But your Lordships are told, that the respondent had fixed herself down to the charge of *venus nefanda*, or of an attempt to gratify unnatural lust, by the details and arguments in her written and oral pleadings,—by her references to obscene books,—to

Brantôme, and to the Scriptures,—by the witness Mary Brown's opinion which she quoted, and by hints, insinuations and assertions throughout the whole procedure, that the present case is the most infamous of which an example is afforded in the records or experience of the country.

The respondent entreats your Lordships to observe the opposite manœuvres practised by the petitioners in different stages of the cause, to narrow the issue which had been joined, and to drive her either out of the one part of it or the other. It was maintained during the pleading on the relevancy, that she ought to be allowed to prove nothing which inferred that the petitioners went to the beds of each other, with the intention to gratify lust; because it was physically impossible that such gratification could be obtained from their congress, and therefore morally impossible that they could seek a congress with that intention. The respondent was under the necessity of combating those propositions, by shewing in what manner lust might be so gratified, and producing authorities that the propensity had existed, and had been indulged in all the nations and ages with which we are best acquainted. Unless she had done this, she would have been excluded from the proof of any fact which implied more than simple indecency. But because she did not abandon that part of her cause upon an argument of the petitioners, they now insist that she has abandoned the other part, and that she has fixed herself down to a charge of sensual gratification exclusively, because she has argued that the senses may be, and often are, so gratified. She has no hesitation in saying, that she thinks the facts condescended upon and proved, go the length of implying that the congress was sought for the purpose of indulging a venereal appetite; and it was so pleaded on the evidence, not by one counsel, as the petitioners insinuate, but both, though the senior counsel expressed his ignorance of the precise manner in which the gratification was obtained. Should any of your Lordships, however, entertain a different opinion, holding that nothing farther than mere indecency is established, and that appetite was no motive to the practice, such indecency, (provided always it was committed in the manner specified in the condescendence,) falls as directly within the issue joined, as if it had been the result of the most inordinate lust. There is not the least foundation for the plea, that the respondent has restricted herself to a charge, the essence of which consists in an *intention*

tion to commit a particular crime. She has condescended upon facts, and if these facts are proved, or as many as amount to indecency, her charge has been made good.

But it is said, that Lady Cumming's letter to Mrs Stirling of Kippenross, infers, that she had accused the petitioners of *venus nefanda* to Lady Cunynghame and others, because, alluding in that letter to the conduct of the petitioners, she terms it a *horrible story*. The respondent never hinted to Lady Cunynghame, nor any other individual, a circumstance more than is contained in the condescendence, nor indeed did she ever mention half what is there set forth. But if the acts condescended upon are proved, or indeed the acts specified in any one substantial article in the condescendence, will not the story be *horrible* enough, whether the petitioners were engaged in the gratification of appetite, or mimicking the mode of gratifying it from any assignable cause?

Thus much has been said, to prevent the petitioners from taking an undue advantage by the assistance of a plain fallacy in argument. At the same time, as already observed, the point itself seems to be of no great importance. In the respondent's conception, it is scarcely possible to hold that the charge is proved, without coming also to the conclusion, that there was an intention on the part of one or both of the petitioners to procure some species of venereal gratification.

On the physical possibility of venereal gratification being obtained by the congress of two women, and the known existence of such practices, the petitioners have now wonderfully little to say; and for that little, they have made an apology, by declaring that they have said more than they intended. They set out with observing, that they never denied that women might abuse their bodies with each other, in consequence of preternatural conformation, or by means of instruments, or of digitation. This concession is of itself enough for the respondent's case, on the point of physical possibility. There is nothing in the facts set forth or proved, to exclude the use of instruments, or of digitation; there are some circumstances which strongly indicate that digitation was used, perhaps not constantly, but to a certain degree, and sufficiently to produce the effect intended. There is nothing to exclude preternatural conformation, though that certainly is the least probable case of the three. But it is said, that the respondent does

does not aver, or offer to prove, that any one of those admitted modes of gratification was used, and therefore it must be held that none of them was used. Surely this reasoning is illogical. The respondent has stated, and, as she humbly conceives, has proved facts, which infer either that venereal gratification was procured, or was sought for; and it is plain from the *species facti*, that the witnesses had no means of knowing the precise mode resorted to for that purpose. The legitimate inference, therefore, is, that some mode which either did give, or was intended to give, those sensations, had been resorted to; and if the three modes specified by the petitioners are the only ones which can give, or can be conceived to give, such sensations, then it must have been one of them. But it is a most gratuitous and unfounded assumption, that the object could not be attained but in one of these three ways. Every one knows, that the imagination itself, if sufficiently prurient, can in most temperaments, and always in a delicate one, produce a venereal crisis. But if such an imagination is assisted by the contact of a naked body, by motion and by simple friction, no one can doubt of the result. Nor were these the only aids at hand; a twisted petticoat, a knot on a shift, and a thousand other devices, might have been fallen upon to produce such a callosity as would give to both parties the sensations desired. On this subject it is needless to dwell. If the respondent regrets any thing in this cause, it is the unnecessary reference which has been made to disgusting and nauseous authorities, in order to prove, what no person possessed of ordinary information, or an ordinary constitution, could ever seriously doubt, what obtrudes itself on the notice of every student, as well as of every libertine, and what has become proverbial in every language in Europe. The respondent was betrayed into a detail of authorities by the affected scepticism of the petitioners; but it was a scepticism which might safely have been passed over in silence; and now even the petitioners themselves seem ashamed of it.

But since authorities have been quoted, it may be observed in one sentence, that the remarks which the petitioners have made upon them, proceed on the common fallacy of reasoning from particulars to generals. Because there is a passage in Aristophanes, quoted by Scapula, and his master H. Stevens, mentioning the use of the *olisbos* by certain Tribades, to whom he alludes, it does not follow that all Tribades must use an *olisbos;* for the

the object of that instrument may be attained in various other ways, to each of which the name of 'tribadism' is equally applicable. Most of the classic authors who mention the practice, are silent as to such an instrument; and various writers expressly distinguish the class, who do, from those who do not employ it, as appears from the extracts laid before the Court. In the same manner, because one critic interprets a passage in the writings of St Paul, in a sense different from that in which the respondent has taken it, the petitioners assume this critic to be correct, though at variance with Tertullian, Clemens Alexandrinus, Grotius, Poole, and Macknight, besides many others, to whom reference might be made.

But supposing this passage to be equivocal, will all the other express authorities in process admit of being explained away in that manner? The opinion of *twenty* of the most eminent law-writers, including the respectable Lord Royston, can not be overturned by a sneer at their belief in witchcraft. If it could, scarcely any author, earlier than the eighteenth century, could be relied upon as to any fact; for the belief, a century ago, was almost universal. But there is no connection between supernatural agency, and the indulgence of a physical appetite by the simplest physical, though improper and indecent means. The petitioners repeat an observation of the Lord Ordinary with regard to Lucian, which was a natural and pardonable mis-recollection of his Lordship, when the author was not before him, but which ought not to have been persisted in by them, when a reference to the passage itself shewed that it was unfounded *. Nor will your Lordships disregard the host of other authorities, who have treated of this practice as extremely prevalent; because Brantôme,

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* His Lordship observes, that in the Dialogue referred to, Lucian betrays his utter ignorance of the possibility of the crime; being reduced at last to make his girl refuse to disclose the secret. Leæna mentions, that her paramour was not an hermaphrodite, but nevertheless embraced her with all imaginable transport; kissed her, and satisfied her passion. A more minute description would have been too gross, even for Lucian; and therefore the girl refuses to tell the exact manner of the operation,—expressly on the ground that it was so *obscene that she did not chuse to mention it*:—αἰσχρὸν ἐστι καὶ οὐ λεκτόν. Does this infer that Lucian was ignorant of the possibility of the crime?

one of the number, is accused by Bayle to deal in hyperboles, when he speaks of Princesses. Suppose him to be a mere Gascon romancer, which was by no means the case; yet in describing the manners of the age, he would never speak of a practice, as actually existing, which all his readers knew to be physically impossible. But it is a useless waste of time to prove, what no mortal ever doubted. The petitioners may throw out an insinuation, that physicians, if consulted, would say, that venereal pleasure could not be obtained in the way described by the witnesses. If such physicians could have been found, there is little doubt that their evidence would have been resorted to by the petitioners; but if the whole College were to join in so preposterous an opinion, your Lordships would not pay the least regard to it. If venereal gratification can be procured from the exercise of a depraved imagination alone, which no person who pretends to an acquaintance with the human constitution will dispute, how much more must such a congress, as is described by the witnesses, be effectual for that purpose, when the mind is corrupted, and all sense of decency is destroyed. There are so many means of excitement, both through the medium of the fancy and the senses, so close a mimickry of natural pleasure, and such an obvious mode of applying some kind of mechanical stimulus to the organs, that the cause is plainly more than adequate to the end in view. To talk of medical Professors declaring upon oath, that the facts 'relied upon are of a nature totally inconsistent with the 'object attributed to them, and have not the slightest tendency 'to prove that object,' is an assertion so utterly absurd, that the respondent need not animadvert on the improper purpose for which it was made, namely, to bias the Court in a concluded cause by pretended matter of fact not in evidence. If any medical man could be found who would so depone, the respondent is confident that your Lordships would hold him insane, or worse than insane. Fortunately, it is but an idle bravado, thrown out in a branch of the cause, from which the petitioners feel themselves compelled to make a precipitate retreat.

Pet. p. 29.

Leaving the question of physical possibility, the respondent will proceed to a post where the petitioners have attempted a more vigorous stand, namely, the moral improbability, that they have been guilty of the practice. Before proceeding to consider the ground on which this improbability is alleged, it may be proper to say a few words on the nature of the argument itself. No

attempt

attempt can be more unavailing than to discredit a fact, resting upon the direct testimony of credible witnesses, by reasoning *à priori* against the probability of its existence. When witnesses depone to what has fallen under their own observation, they speak from the only certain source of human knowledge with regard to things external. On the contrary, an inference of what is likely or unlikely to have happened, deduced from pre-existing circumstances, which we suppose to have had a tendency either to prevent it, or bring it about, is from its nature uncertain, our knowledge of the connection of events being so extremely limited and imperfect. No event would appear improbable, were our capacities sufficiently enlarged to trace all the sources from which it sprung; but not a day passes in which things, to us the most unlooked for and extraordinary, do not come to pass, teaching us how little reliance we should place on our own foresight. This mode of investigation, therefore, has been long exploded in physics; and it is no less fallacious in every other science, and particularly in Morals and in Law. Thus, for example, it ought never to be admitted against the evidence of direct testimony, for that is nothing better than the opposition of pure hypothesis to actual experiment. The evidence of the senses is as satisfactory, where the most unexpected, as where the most ordinary event takes place; and the presumption must always be, not that they are deceived, but that our ignorance prevented us from anticipating what has happened. And the credibility of those who report what they profess to have seen or heard, is not to be measured by our preconceived opinions of what is probable or improbable, but by the ordinary criteria by which the truth or falsehood of all human testimony is to be tried. This is no new doctrine in law. '*Where there are two* '*men*,' says Mr Justice Dolben, '*that positively tell you a thing that* '*lies within their own knowledge, and swear it is true, there is scarce-*'*ly any probability that should weigh against such an evidence.*' Trial of Gascoigne.

However plausible the argument might appear *à priori*, that the petitioners would not do what the witnesses have sworn they have done, the respondent is confident, that your Lordships would not regard it, being a mode of reasoning in itself so essentially inconclusive. But independently of that general objection, let it be considered, in the next place, whether the petitioners have been successful in shewing that any such improbabilities exist.

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The first improbability which they oppose to the charge, is their previous good character, in evidence of which, they have called several witnesses, and referred to various documents, particularly to a correspondence between themselves. On this subject, the respondent readily admits, that the petitioners are not only entitled to found upon the general presumption in favour of innocence, but upon characters previously unexceptionable, and upon the good opinion of their acquaintances, which is expressed, particularly by some of Miss Pirie's female friends, in very warm terms. The respondent may add, that unless they had been well recommended to herself, and unless she had believed them to have been in every respect worthy and respectable, she never would have placed three of her grandchildren under their charge.

But your Lordships are entreated to consider how little weight any presumption arising from general character can have against the direct testimony of credible witnesses, swearing to facts which fell under their own immediate observation,—to what they themselves heard, felt and saw. In no case can reliance be placed on such a presumption; but in the present case, it is peculiarly unavailing. In the investigation of criminal charges, founded on cruelty, dishonesty, or baseness, strong indications of guilt or innocence may be drawn from this source; because those dispositions are incompatible with the duties requisite in the ordinary intercourse of life, and are constantly betraying themselves in the manners and sentiments, as well as the actions of the individual. It is not so with a propensity to sensual gratification, however disgusting a shape it may assume. The respondent trusts, that she will not be held an apologist for such propensities, when she asserts, that they may be united with many amiable and excellent qualities, and that the person addicted to them may possess the esteem and love of all his acquaintances until detection comes upon him. It will be remembered, that they frequently originate from a temperament of body which cannot be controlled without uncommon fortitude and vigilance, and of which every gradation is observed from a state of ordinary ardour to that of absolute phrensy. It was remarked long ago, '*Lascivus, salax, et qui in venerem furit, vere est ægrotus.*' The respondent can appeal to the experience of every one of your Lordships, whether you have not known persons of the most engaging character, impressed with a strong sense of virtue and religion, and zealous in the discharge of their duty, who have fallen a sacrifice to sensual indulgence.

Jul. Pol. Onomast.

dulgence, undeterred by the inevitable prospect of their own ruin, and the ruin of all they held dear upon earth. When such events occur, they are generally attributed to insanity; and certainly every mind is in one sense insane, whose passions are not subject to the controul of reason. But the intellect may be totally unaffected, and most frequently is so, even in the wildest fury of those inordinate desires; and it is an established fact in morals, that gratification alone, when suffered to become habitual, often renders the propensity irresistible.

In common life, persons of this temperament have various resources, either in the indulgence of lawful pleasure, in illicit but natural amours, or sometimes in secret and solitary vice. But in particular situations, obstacles almost insurmountable present themselves against all these modes of indulgence, and then the temptation springs to commit more disgusting and unnatural lewdness. Its existence in monastic institutions for either sex, has furnished the most frequent and best founded argument against their policy. It is a well known fact, that in every well regulated nunnery on the Continent, precautions used to be taken against such practices, and in some of them, notwithstanding, it is said to have prevailed to a very great degree.

The situation of the petitioners in their boarding-school was in some respects similar to that of nuns in a cloister. Independently of the general restraint under which all unmarried women are laid, their employment precluded them, in a particular manner, from intercourse with the other sex; they lived perpetually under the eye either of their pupils or of each other; and they had not a moment, by night or by day, to be alone. Supposing, therefore, that either of them was possessed of an unfortunate temperament, or had been previously addicted to solitary indulgence, (and of the frequency both of the one and the other, it would be the grossest affectation to pretend a doubt,) your Lordships will easily see how peculiarly exposed the petitioners were to temptation. Their early intimacy, their rapturous friendship, and the practice of sleeping together in the same bed, (when, by the way, there was not the least occasion for it,) afforded excitement and opportunity. And there is nothing in the smallest degree inconsistent nor improbable in the union of such feelings, with every one good quality which their most partial friends ascribe to them.

But let the evidence with regard to their character be a little more minutely considered. As to Miss Woods there is very little

information. Your Lordships have nothing but the testimony of her aunt, who was her partner in the boarding-school at Drumsheugh, and who was carrying on a day-school, with her assistance, at the time the proof was going on. Great allowance must therefore be made for the partiality of this witness in favour of a person with whom she was so nearly connected, and on whom she was in reality dependant; and exclusive of these considerations, Mrs Woods was the last person before whom her niece would be likely to display any feelings connected with the subject of this cause. It may be added, that after Miss Woods left the house of her aunt, where she had been educated, she spent some years in London and elsewhere, previous to the establishment of the school at Drumsheugh, when of course she was completely removed from the observation of that lady.

The only other testimony in her favour is that of Mr Thomson, clerk to the Board of Trustees, who says that he occasionally met and conversed with her at her uncle's table, when he was alive, but that he has had less frequent intercourse with her since that gentleman's death. It is in evidence, that Mr Woods died more than eight years ago. Now, the respondent imagines, that an occasional conversation in the course of a dinner party, at so distant a period, or indeed at any period, is a very meagre and imperfect opportunity to acquire such a knowledge of a young lady's character as would be the foundation of any decisive testimony in her favour. It rather seems strange that Miss Woods, who has resided so long in this city and the neighbourhood, should not have been able to adduce a single witness to her character, who had lived with her on the footing of habitual intimacy, excepting her aunt Mrs Woods, who was also her partner. There is a letter, indeed, from Miss Anne Erskine, a lady whose nieces were a short time under her care, but who had no better opportunity of being acquainted with her, than any other person whose relations were at Drumsheugh. That lady, judging from the progress which her nieces had made, expresses her conviction that Miss Woods was well qualified to educate young persons; and the respondent has no doubt of her accomplishments in that line; but they do not bear at all on the department of character now in question.

With regard to Miss Pirie there is a great deal more evidence. She seems, by the testimony of all her acquaintances, to have possessed many valuable and excellent qualities; to have been ardent in her attachments; zealous and able in the discharge of her

her duty towards her pupils, and affected with a sense of religion. But there is one feature of this lady's mind, so fully brought out by all the witnesses whom she has adduced, as well as by the facts which she herself has established, and by the letters which she has put into process, that your Lordships cannot overlook it on the present occasion. The respondent alludes to an overheated imagination, and a morbid irritability of feeling, in consequence of which she was liable to perpetual excitation, and subjected to the influence of erroneous and exaggerated impressions. This peculiarity is described by Mrs Hamilton, as existing in 1805, when Miss Pirie was in the family of Lord Lucan. After having deponed that she was irritable in her temper, Mrs Hamilton explains this irritability to consist 'in *a highly excited state* 'of *feelings*, where any thing occurred to call forth her censure, 'dislike or approbation. On such occasions, (though only with 'regard to the faults incident to childhood,) *her imagination ex-* 'aggerated the circumstance into a cause of real vexation, so as to 'agitate the whole frame of her mind.' State, p. 152. H.

The same circumstance is also taken notice of in the certificate of Mrs General Campbell, which the petitioners have produced. She mentions, that Miss Pirie used to express herself with a keenness which every woman had better let alone, and then adds: 'The 'great fault I ever had to Miss Pirie, was too great *warmth of* 'feeling, which proceeds from an ardent temper. On this point we 'differed often, and *I did all I could to keep it under, and to prevent* 'her pupils imbibing any of it. Her attachment to Miss Woods ap- 'peared to me to be enthusiastic. I also endeavoured to correct that, 'but it would not do.'

But this is a faint sketch of her feelings in comparison with the picture afforded by her conduct in the boarding-school, and her correspondence with Miss Woods. At their meeting, she entertained for Miss Woods a most enthusiastic attachment, as your Lordships have just seen from Mrs Campbell's letter; and still more from the rapturous description which is given of it in her letter to Mrs Hamilton. She declares, 'That her mind was ac- 'customed to contemplate Miss Woods as the model of every 'virtue; as superior to every thing that is unworthy of a great 'and exalted mind; that *she loved her as her own* SOUL, *and would* 'have laid down existence to have increased her comforts.' No sooner, however, did they become the inmates of one family, than a deadly dispute arose, because certain tradesmen made a mistake in omitting Miss Pirie's name in the title of their accounts. The idea

idea that ſhe had been overlooked immediately took poſſeſſion of her mind; and it appears from Mrs Woods's evidence, that nothing could eradicate that impreſſion, and that ſhe became diſcontented and unhappy, tormenting herſelf and every body around her. Accordingly, from May 1810, there was a perpetual ſcene of quarrels and reconciliations, of ſcolding, crying, and careſſing, ſometimes in private, and ſometimes in preſence of all the ſcholars. It is ſaid in the petition, that from the month of Auguſt, they were in a ſtate of conſtant irritation; that they were *at war* with one another; and that it was but occaſionally they had the ordinary intercourſe of friends. The letters of both the ladies furniſh abundant evidence of the violence of theſe quarrels while they laſted. In the month of October 1810, Miſs Woods prefaces a
State, p. 139. F. letter to Miſs Pirie, with thoſe words: 'Madam, I have been
'made deeply ſenſible of my error, in ſuppoſing that buſineſs might
'be tranſacted between thoſe who are termed friends, in a diffe-
'rent manner from that in which it muſt be ſettled between *de-*
—— p. 141. C. '*clared foes.*' In an anſwer to this letter, Miſs Pirie ſays: 'You
'know the line of conduct you meant to purſue in reſpect to Mrs
'Woods and me, ſo muſt have proffered the ſacrifice at a time
'when you declared ſincere love and friendſhip for your too cre-
'dulous friend, as your ſyſtem of eſtabliſhing Mrs Woods, in op-
'poſition to my intereſt, has uniformly been purſued, ſince the
'very commencement of the plan. I ſhall inform you three
'months before I quit *this abode of misery*; but this is all you
'can reaſonably expect from me. The papers I unfortunately re-
'ceived ſhall never be left toſſing about for any one's peruſal,
'as you left mine, but ſhall either be returned, or conſigned to
'the flames, when all doubts are fled of your motives in reſpect
'to me.' (Signed) JANE PIRIE.' In a letter written immediate-
—— —— C. ly afterwards, Miſs Pirie ſays: 'I received your epiſtle, and
'return you many thanks for your attention in ſending it
'on an evening, when you knew it would be doubly plea-
'ſant. I ſhall oblige you to conſider me as your equal, al-
'though you have worked hard to bring me from reſpectability to
'a ſituation I conceive contemptible. I ſhall never eſtabliſh myſelf
'by degrading you in the eyes of the world, nor by *diſhonourable*
'means eſtabliſh myſelf head of the concern, and 'Lady of this
"houſe,' &c. having no ſuch *mean* intentions. I heartily agree to
'have every thing ſettled by a man of buſineſs. and to adhere to

'every

'every thing he thinks juſt. Every ſtep that can be taken muſt 'be in my favour, as you have been a compiete 'free will agent' 'from the beginning. Draw out your terms of agreement, and I 'will mine, and let both be ſubmitted to any two perſons we may 'appoint. I truſt the Almighty may enable me to be *indifferent* '*to a perſon who has proved herſelf* unworthy *of the confidence I* '*placed in her, and make your* ſelfiſh *conduct a means of making me* '*truſt to Him alone.* (Signed) JANE PIRIE.' All the witneſſes mention the exiſtence of theſe quarrels, and the violence with which both the petitioners, and particularly Miſs Pirie, appeared to be agitated on theſe occaſions. Miſs Munro de- State, p. 56. E.
pones, that on one occaſion, when they quarrelled in the dreſſing-room. the altercation was ſo loud as to waken all the ſcholars in Miſs Woods's room with the noiſe. Miſs Stirling gives a painful deſcription of Miſs Pirie's behaviour after one of theſe quarrels, when ſhe lay crying and ejaculating aloud in bed; and Mrs —— p. 113. A.
Woods details the circumſtances of her imperious and overbearing behaviour, and Miſs Woods's reſolution to expoſe her before all the —— p. 124. B.
ſcholars. Indeed the phraſe which the petitioners themſelves have uſed, is ſufficiently expreſſive, when they declare, that during a certain period they were AT WAR with each other. Yet this is the friendſhip which they boaſt of, as the infallible teſt of their virtue Pet. p. 44.
and religion, and to which they have preſumed to apply the beautiful deſcription which Cicero has given, of the pureſt, the moſt benevolent, and moſt unchangeable of human affections. They might have found another paſſage in the ſame dialogue, which better applied to their ſituation: '*Nibil eſt* TURPIUS *quam cum eo* 'BELLUM GERERE *quicum familiariter vixeris.*'

But this ſtate *of war* was *not* uninterrupted; it would have been more to the credit of both parties if it had. After the raptures of their firſt attachment ought to have been cured; after Miſs Pirie had experienced all the faults, or ſuppoſed faults of her friend, and the impoſſibility of living with her under one roof, you find the ſame glow of paſſion returning by fits, and expreſſed in the ſame unmeaſured language. Within a few days of the correſpondence which has juſt been quoted, Miſs Pirie ſends a Bible to Miſs Woods, with the following note, compoſed in an extaſy, indecorous in any caſe, but in the caſe of a perſon with whom ſhe could not live a week together on ſpeaking terms, characteriſtic of little leſs than mental derangement: 'Accept, my beloved, of that State, p. 139. C.

'Book, which can give conſolation in every ſituation; and, dear-
'eſt *earthly* friend, never open it, without thinking of her who
'would forego all friendſhips, but her God's, to poſſeſs yours.—
'Ever your own, (Signed) JANE PIRIE.' This is not the language of rational piety; it is the effuſion of a mind fitted to be the ſport of every paſſion; to be rouſed to the higheſt pitch of excitation by the firſt trifle that preſents itſelf, and to paſs from one extreme to another, without the ſuſceptibility of either moral or intellectual controul. Feelings like theſe may be compatible with many amiable qualities, but they are not favourable to the practice of virtue. They are liable to give place in a moment to propenſities of an oppoſite, but no leſs powerful tendency, and the romance of friendſhip, or rapture of devotion, alternates with the gratification of the loweſt ſenſuality. Wherever there is an habitual indulgence of violent, but unsteady and flickering passions, nothing is more likely than a transition to vice on the one hand, or insanity on the other. The petitioners may enlarge on the fervour of sentiment, and eloquence of expression exhibited in the note to Miss Woods, and the letter to Mrs Hamilton; but when these documents are contrasted with the angry correspondence between the parties at the very same period, and the scenes which had recently before passed, and which continued to pass between them, the respondent conceives, that Miss Pirie's worst enemy could not have placed her in a more unfavourable light, in so far as sobriety of feeling and steadiness of principle are concerned.

This is not an imaginary picture of the human heart. The affinity of voluptuousness to enthusiasm is mentioned in the works of every moralist and divine who has written upon the nature and government of the passions, and examples of its occurrence are unfortunately but too frequent in the annals of mankind. A most remarkable one is related by the eloquent and profound historian of Charles V., when treating of the fanatical Boccold and his followers; and he does not fail to trace to its sources, a phenomenon, which, to an ordinary observer, might appear unaccountable: 'Having now attained the height of power, Boccold
'began to discover passions which he had hitherto restrained, or
'indulged only in secret. *The excesses of enthusiasm have been ob-*
'served in every age to lead to sensual gratifications; the same con-
'stitution that is susceptible of the former, being remarkably prone to the
'latter.—

Charles V. B. v.

'*latter.*—After the example of their Prophet, the multitude give
'themselves up to the most licentious and uncontrolled gratifi-
'cation of their desires.—Every excess was committed, of which
'the passions of men are capable, when restrained neither by the
'authority of laws nor the sense of decency; and by a monstrous
'and almost incredible conjunction, *voluptuousness was engrafted*
'*on religion, and dissolute riot accompanied the austerities of fanatical*
'*devotion.*'

It is curious to observe, how the petitioners, almost in one breath, found upon the warmth of their love, and the bitterness of their enmity, as equally conclusive against the truth of the present charge. The first they represent as the undoubted indication of the most exalted purity and virtue, and the second as incompatible with the existence of a criminal intercourse. If the love had ended when the hate begun, it is possible that a consistent argument might have been drawn from the opposite states of feeling which they experienced at different periods. But when you find that quarrels and reconciliations alternately occurred in perpetual succession, from the period of their meeting to that of their separation, you can regard their friendship as nothing but the effervescence of impassioned and ill regulated minds, and the intervals of returning fondness, as peculiarly fitted for the indulgence of habits, to which minds of that unfortunate description would most easily fall a prey.

After enlarging upon their moral and religious character, the petitioners proceed to consider the circumstances in which the offence is said to have been committed, as furnishing another presumption against the truth of the charge. The duties of the school are represented as so laborious in themselves, and occupying the attention of the petitioners so exclusively, that there could not have been time or opportunity for the indulgence of licentious thought, and still less for the gratification of appetite. On this, as on every other point of the cause, the facts are coloured and exaggerated to such a degree, that the petitioners seem more anxious to amuse your Lordships with eloquent declamation than to carry conviction to your minds. Without disputing that idleness is often the nurse of sensuality, can it seriously be maintained, that the idle alone are exposed to its allurements? Where propensity of this kind exists, no engagements however important, no duties however sacred, no application however intense, will counteract

teract their pernicious influence. Intervals of leisure are caught at with increased avidity to procure gratification, and the obstacles to be surmounted serve only to heighten its poignancy. But in describing their unremitting toil, the petitioners forget that it is in evidence, that they had near three hours in the evening, if not more, to themselves, that is, from a little after eight o'clock, when the young ladies went to bed, till eleven, when the petitioners were in the habit of retiring themselves. After one of their violent quarrels, which happened in the month of August, Miss Woods usually supped with her aunt, but previous to that period, it may be inferred from the proof, that they spent the evenings together, and alone. Further, during the holidays the petitioners had plenty of time to themselves, and they slept all night in the same bed when the house was empty, and when of course there was not the least occasion for doing so. The respondent by no means wishes your Lordships to rest a presumption of guilt on that circumstance alone. Unfortunately you have the direct testimony of one witness, that this was the time in which they chiefly addicted themselves to the practice, and which they afterwards spoke of to each other as most proper for the purpose. At present, the circumstance of their sleeping together is only mentioned as quite fatal to the hypothesis, that their professional duties left them no time or opportunity for indulgence.

State p. 49. H.
—— p. 50. H.

But the ground on which the petitioners chiefly rely in this branch of the cause, is the domestic arrangement during the period immediately after the holidays, when all the boarders had returned to school. Miss Pirie slept in one apartment, and had Miss Cumming for her bedfellow, while Miss Woods slept in the other with Miss Munro. In each appartment there were three or four girls besides, and in particular Miss Stirling's bed was within two or three feet of Miss Pirie's. From these facts it is argued, that since the petitioners, who had the command of the house, slept without necessity in separate rooms, and in separate beds, with two of the eldest girls as their bedfellows, another grown up girl being in the bed next to Miss Pirie, and the rest of the boarders equally distributed in the rooms, it is morally impossible that they, being women in their sound senses, could have followed or intended to follow the practices of which they are accused. They call upon your Lordships to consider the motives by which human

human conduct is usually regulated, and to say, whether the charge brought against them is not incredible and absurd.

The respondent is confident, that this view of the case will appear at first sight to your Lordships in the highest degree partial and fallacious. Upon the supposition that the whole arrangement of the family had been devised and preconcerted for the purpose of the petitioners carrying on their indecent practices in the bed of each other, it would no doubt be extraordinary and apparently unaccountable; yet, even in that case, the petitioners might have had motives for acting as they did, very reasonable in themselves, although utterly unknown to your Lordships. But the assumption is purely gratuitous, that the object in making this arrangement must necessarily have been the practice which followed. It will be observed from the sketch of the house annexed to the State, that there were only four bed-chambers, all of which were upon one floor. One of them was occupied by Mrs Woods, two of the largest were required for the young ladies to sleep in, and the fourth was essentially necessary for a dressing-room. Now, there is not the least reason to suppose, that when the arrangement was first made, the petitioners had it in view to go to each other's beds in the night. They had sufficient opportunities, if they were then addicted to the practice, to gratify their inclinations after the young ladies had retired. It is very possible, that the practice may have commenced during the summer holidays, when, as far as it appears, for the first time in their lives, they slept in one bed for some weeks at a time. Certain it is, that the first evidence of any improper connection refers to the time of the holidays. It is natural, therefore, that in settling how they were to sleep before the holidays, the universal custom of boarding-schools should have been followed; namely, that there should be a superintendant in each room, to enforce decorum and propriety of behaviour among the young people. If no such precaution had been adopted, it would have excited the surprise and disapprobation of every person interested in the establishment. When the school re-assembled, the petitioners might still look to the evening as the period of indulgence, without preconcerting meetings in each other's bed, (a plan obviously attended with inconveniency and risk,) and consequently without overturning the whole arrangement of the family, by changing rooms or beds, or bedfellows. But soon afterwards, the quarrels between the petitioners grew more frequent and exas-

perated, which led Mrs Woods to withdraw to her own apartment, and her niece to sup with her there. The intercourse between the petitioners was in this manner frequently interrupted, but reconciliations and fits of fondness occasionally took place; and your Lordships have the admission of the petitioners themselves, that these reconciliations sometimes commenced in consequence of the one party passing at night through the apartment of the other. Nothing is so likely as that on one of these occasions they ventured, in a moment of returning love, to hazard an experiment which they had not premeditated, and having escaped, as they supposed, without detection, to be seduced by the warmth of their feelings to repeat it afterwards. For it is the characteristic of guilt to be timid and cautious at first, to grow bolder by impunity, and at last to become careless and foolhardy. But your Lordships have it in evidence, that the experiment was not repeated without apprehension, that a resolution was formed to abandon it till the holidays, and that as soon as the petitioners had reason to suppose that they were observed to a certain extent, it was immediately discontinued.

Page 71. D.

Another supposed moral improbability in the charge, is said to arise from the disputes which existed between the petitioners in the period from August till November, during which all the meetings sworn to by Miss Cumming and Miss Munro took place. Your Lordships are told, that during that period the petitioners were in a state of constant hostility, which is represented as entirely inconsistent with the practice imputed to them. This is one among many instances in which the petitioners not only attempt to torture the evidence into a sense different from that which it naturally bears, but different from the account which they themselves give of their quarrels in another part of their pleadings. Mrs Woods depones, that their disputes began about six months before the school broke up, and 'she thinks their 'differences *rather* increased, particularly during the last *three* 'months that the school continued.' Does this infer, that the petitioners were in a state of *uninterrupted* war, as it is expressed, during these three months, that there were no reconciliations, no intervals of peace and good will? Your Lordships will recollect, that Miss Munro, Miss Cumming and Miss Stirling, all depone that they have witnessed such reconciliations; that the amicable settlement by which the chief cause of contention was removed took place, as Mr Reid depones, two months before Martinmas;

and

and, lastly, that there is evidence under Miss Piric's hand, as late as the 13th of October, that she then considered Miss Woods as her dearest earthly friend. And in the answers to the condescendence, the petitioners expressly state, that 'Miss Pirie was 'always sensible that the fault did not lie so much with Miss 'Woods as with her aunt;' and that 'though Miss Pirie was fre- State, p. 27.
'quently irritated and led to say harsh things, her regard for her 'was never in reality abated, but, on the contrary, from natural '*warmth of disposition, she used, after such quarrels, to be equally* '*eager to be reconciled to Miss Woods, and to remove the unhappi-* '*ness which she said their differences produced.*' By their own confession, therefore, their hostility was not of such a nature as to preclude temporary accommodations, or to obliterate their original attachment. But it is said, that they came to a final resolution to separate, which they would not have done if they had fallen into this practice. The respondent confesses she is utterly unable to discover the force of this argument. Does the circumstance of having yielded to one improper species of irritation, necessarily infer a guarantee against the effects of every other species? Might not the same highly-excited state of feelings, which gave rise to enthusiastic attachment at one time, produce jealousy and resentment at another: You have seen, that the 'dearest earthly friend' on one day, might be a declared 'foe' on the next; and why then might a resolution to separate be formed under the one impression, and abandoned under the next? If it ever was formed by the petitioners, it was quickly abandoned; for the amicable arrangement brought about by Mr Reid, consisted in their agreeing to carry on the business in partnership, and to shake off Mrs Woods.

An attempt is made to prove, that at the very time Miss Cumming fixes for one of their nocturnal visits, a dispute existed between them; but the total failure of this attempt, affords a curious specimen of the resources to which the petitioners are driven. Miss Cumming was 'desired to recollect, as nearly as possible, State, p. 80. G.
'when it was, and how long after the holidays, that Miss Woods, 'by coming into Miss Pirie's bed, and, along with Miss Pirie, do-'ing what she has deponed to, made the witness think the conduct 'of the pursuers improper and indecent?' In the beginning of her evidence, she had said, that she could not recollect the dates of these visits; but to this question she answered, '*she dares say* it was '*about* two months after the holidays before she thought there was

'any

'any thing improper or indecent in what they did. Interro-
'ted, Does ſhe mean to ſay that till near the end of September it
'did not occur to her that the conduct of the purſuers to each
'other was indecent, which would be about three weeks after Miſs
'Munro came to ſchool? depones, That ſhe is certain it was after
'Miſs Munro came to the ſchool; *but ſhe does not remember exactly*
'*when.*' But the holidays ended on the 20th of July, and hence it is inferred, that this congreſs muſt have been on the 20th of September.

Miſs Munro fixes the time of the viſits to her bed in the end of September and beginning of October. But Miſs Woods writes on the 9th of September to her ſiſter, that a difference exiſted between Miſs Pirie and her, which might lead to a ſeparation; and on the 24th ſhe writes again, complaining of Miſs Pirie's conduct. From theſe premiſes, it is argued, that there was a diſpute exiſting at the very time aſſigned for their intercourſe, which is ſaid to involve an abſurdity. It appears on the face of the evidence, that theſe women were quarrelling one day, and careſſing the next, during a period of ſix months; and the longeſt diſpute of which any notice is taken, does not exceed a week or ten days. You have a reconciliation brought about by Mr Reid, two months before Martinmas, and in the courſe of October, you have two letters paſſing between them, of the moſt paſſionate friendſhip, and paſſionate reſentment. It appears from one of theſe letters, that a great deal of correſpondence had taken place; none of it, however, is produced, except the very ſcanty ſpecimen annexed to the proof, otherwiſe ſome light might have been thrown on dates, as well as other points of more importance in the cauſe. But from the documents actually produced, taken in conjunction with the evidence, there is not the leaſt reaſon to conjecture, that there were not ſufficient intervals of friendſhip during the whole autumn, for the indulgence of propenſities acquired, and probably become habitual at an earlier period. Indeed, by their own confeſſion, in one part of their pleadings, friendſhip was their ordinary ſtate of feeling. From the 9th to the 24th September, there was plenty of time for reconciliation, as well as from that time to the 13th of October, when the rapturous note was written. Now Miſs Cumming certainly fixes no date that will not apply to the intervals as well as the alleged days of hoſtility.

But inſtead of there being that accumulation of improbabilities, which, according to the petitioners, amounts to moral certainty of the charge being falſe, the reſpondent conceives, that in ſo far as

any

any reliance can be placed upon the argument, *à priori*,—a fallacious mode of reaſoning at beſt in a queſtion in which there is room for an appeal to direct teſtimony,—it is greatly more improbable, that the ſtory ſhould be falſe than that it ſhould be true. Before touching upon that ſubject, however, it will be proper to lay before your Lordſhips the direct teſtimony to which the reſpondent now alludes. In bringing it under your attention, the reſpondent muſt requeſt that you will, in the firſt place, take a general view of the whole, as tending to eſtabliſh the charge, obſerving the concurrence of the ſeveral witneſſes, and the ſupport which the teſtimony of each receives from the reſt, and from circumſtances admitted or proved in the cauſe. It will then be proper to conſider the grounds upon which the petitioners attempt to ſhake this evidence, as being inconcluſive in itſelf, or as being unworthy of belief, either from the character and circumſtances of the reſpective witneſſes, or from pretended contradictions and inconſiſtencies in their depoſitions.

The firſt witneſs called by the reſpondent, is Miſs Janet Munro, a young lady of ſixteen years of age, born of the moſt reſpectable parents, educated in the boſom of her family till the month of Auguſt preceding this unhappy event, living in habits of intimacy with perſons of the firſt character in this city, and eſteemed and beloved by all her acquaintances. To ſuch of your Lordſhips as were preſent at her examination, it is unneceſſary to deſcribe her appearance and manner, in which good ſenſe and good feelings were equally conſpicuous, combined with all the ingenuous ſimplicity of youth. Accordingly, the petitioners themſelves, amidſt the virulent and unfounded abuſe with which they attempted to aſperſe other witneſſes, have not dared to breathe a ſuſpicion of intentional falſehood againſt Miſs Munro. They have more diſcretion than to hazard a charge, which muſt have carried the conviction of its own abſurdity along with it. It is entreated, then, that your Lordſhips will conſider what this witneſs ſwears ſhe heard, felt, and ſaw, in her own bed. She depones, 'That ſhe was a boarder at State, p. 46. A.
'the boarding-ſchool of the purſuers at Drumſheugh: That ſhe
'went there about the beginning of September laſt: That ſhe ſlept
'with Miſs Woods from the beginning, and continued to do ſo
'until about a fortnight before ſhe came away. Depones, That
'during the time ſhe ſlept with Miſs Woods, Miſs Pirie oftener
'than once came into the bed; and the deponent believes her
'clothes were off, *and that the one lay above the other*, and that Miſs

'Pirie

' Pirie was uppermoſt: That there was no candle in the room.
' Depones, That upon the firſt of theſe occaſions, ſhe obſerved *a*
' *ſhaking of the bed, and the bed-clothes toſſing about, and they ſeemed*
' *to be breathing high, and that ſhe felt the bodies of one or both of them*
' *in motion.* Depones, That upon this the witneſs ſpoke to them,
' and ſaid, ' Miſs Pirie I wiſh you would go away, for I can't get
" ſleep;' upon which Miſs Woods ſaid to Miſs Pirie, ' You had
" better go away Jane, for I am afraid you'll catch cold ſtanding
" there;' but at this time Miſs Pirie was ſtill in bed; and that
' Miſs Pirie then ſaid, ' I am not in the bed, I am only ſtanding
" beſide it;' and that when Miſs Pirie made this anſwer, ſhe was
' ſtill in bed. but then got up and went away.'

This is the firſt occaſion that Miſs Munro was ſenſible of Miſs Pirie being in her bed. though ſhe had been previouſly waked in a fright, in conſequence of ſome perſon being there whom ſhe did not know at the time, but afterwards conjectured to be Miſs Pirie.

The ſecond occaſion on which ſhe knew for certain that Miſs
State, p. 47. D. Pirie was in bed, is deſcribed in the following manner: ' Depones,
' That ſome days after this, but the witneſs does not exactly re-
' collect how long, Miſs Pirie came another time to Miſs Woods'
' bed, and that upon this occaſion *they lay in the ſame way, Miss Pi-*
' *rie lying above Miss Woods; and that upon this occaſion the witneſs*
' *obſerved the ſame ſhaking of the bed, motions and breathings as upon*
' *the occaſion already deponed to.* Depones, That there was no
' candle in the room, but ſome day-light came in, but there was
' no day-light on the firſt occaſion. Depones, That from the
' light ſhe ſuppoſes on this laſt occaſion it was about five in the
' morning, and that the light was ſufficient to allow her to diſtin-
' guiſh any perſon in the room. Depones, That in order to make
' them ſenſible ſhe was awake, the witneſs coughed and turned her-
' ſelf: That upon this Miſs Woods turned to Miſs Pirie, and ſaid,
" I ſuſpect ſhe is awake;' and this was ſaid in a whiſper. De-
' pones, That Miſs Woods began a coughing herſelf, and that ſhe
' ſaid to the witneſs that ſhe had heard her coughing, and aſked if
' ſhe had been long awake; that the witneſs ſaid ſhe had, and that
' then Miſs Woods ſaid, ' I am afraid you have got a cold, if
" you'll get up and go to ſuch a drawer in the room, you'll get
" ſome barley ſugar:' That the witneſs ſaid ſhe did not want any;
' upon which Miſs Woods aſked her to get up and go to the dreſ-
' ſing-room and get her ſome water. Depones, That the witneſs
' accordingly

'accordingly got up, and went and brought the water: and that 'before this. the witneſs, by means of the day light, had ſeen Miſs 'Pirie in the bed; but when the witneſs returned with the water 'ſhe was gone.'

In the courſe of her croſs examination, ſome important explanations and additions, which deſerve particular attention, came out.

Upon the interrogatory of the petitioners, ſhe depones, 'That 'it was a tent-bed which ſhe and Miſs Woods ſlept in, and ſhe 'thinks it was a new bedſtead. Depones, That it was apt to creak 'a little when people moved in it, but ſo very little as not to be 'any thing remarkable. Depones, That ſhe is not quite poſitive 'that Miſs Pirie's legs were in bed upon the firſt occaſion, but ſhe 'thinks ſo, and ſhe felt the legs of one of them. Depones, That 'upon the ſecond occaſion ſhe is quite poſitive Miſs Pirie's legs 'were in the bed, at leaſt ſhe was lying in ſuch a manner as to 'perſuade the witneſs that was the fact, as ſhe was below the bed-'clothes; and that upon the firſt occaſion alſo, ſhe thinks her 'body was below the bed-clothes. And being interrogated, and 'deſired to explain a former part of her depoſition, wherein ſhe 'ſays that Miſs Woods turned to Miſs Pirie, depones, That Miſs 'Pirie had been lying above Miſs Woods, but at that particular 'time they were not ſo, but Miſs Woods was lying next to the 'witneſs, and Miſs Pirie in the outſide. Depones, That when 'Miſs Pirie was above Miſs Woods, Miſs Pirie's legs were in the 'bed. Depones, That upon the ſecond occaſion, when ſhe firſt 'perceived Miſs Pirie was in bed with Miſs Woods, her own face 'was to the wall, and her back to them, but ſhe turned two or 'three times: That the firſt time ſhe turned there was not much 'light, but there was enough to enable her to perceive that Miſs 'Pirie was lying above Miſs Woods.' State, p. 5s. C.

Afterwards, being interrogated by the petitioners, ſhe depones, 'That when ſhe went to the dreſſing-room for water as above de-'poned to, ſhe went out by the foot of the bed, and round the 'foot of the Miſs Edgars' bed, after going to the ſide of her own 'to get her wrapper. Depones, Then when ſhe ſo went out 'ſhe did not ſee Miſs Pirie ſtanding between her and the win-'dow, and there was light enough in the room to have ſeen 'her if ſhe had been there, but when ſhe went to the bed-ſide 'to get her wrapper, ſhe ſaw Miſs Pirie in the bed, and purpoſely 'gave her a knock with her elbow, as ſhe ſtooped down for 'her —— P. 35. H.

'her wrapper, in order to let Miſs Pirie underſtand that ſhe
'perceived ſhe was there.'

State, p. 61. B. Again, being interrogated, 'As it was quite dark the firſt time
'Miſs Pirie came into Miſs Woods' bed, how ſhe came to know
'that it was Miſs Pirie lay above Miſs Woods, more than Miſs
'Woods above Miſs Pirie? depones, That ſhe did not know
'which of them was uppermoſt the firſt time. And being inter-
'rogated, How in the dark ſhe came to know that one of them
'was lying above the other, more than by the ſide of the other? de-
'pones, That her reaſon was, that ſhe could not get the clothes kept
'upon her. And being aſked, Whether ſhe wiſhed it to be un-
'derſtood, that ſhe had not formed her opinion of the one being
'above the other, from having in any degree actually felt them
'in that ſituation? depones, *No, on the contrary, ſhe partly*
'*formed her opinion, from having felt them, as they were lying*
'*close to her; and ſhe thought at the time, and thinks ſtill, that*
'*ſhe felt both their bodies at the ſame time.* Interrogated, What
'was the firſt thing ſhe perceived when ſhe awoke, whether
'the purſuers ſo lying above each other, or whether it was their
'whiſpers which ſhe heard? depones, It was the whiſpers which
'ſhe heard firſt, but they were then lying above one another.
'Depones, That the whiſpers were not ſuch as to enable her to
'diſtinguiſh the one voice from the other. Being interrogated,
'as ſhe could not diſtinguiſh the voice of Miſs Pirie from the
'voice of Miſs Woods, how ſhe came to diſtinguiſh that it was
'the voice of Miſs Pirie at all? depones, Becauſe ſhe could not
'think it could be anybody elſe, and of courſe, ſhe could not
'have been certain it was Miſs Pirie, if ſhe had not ſpoken to her
'afterwards, before ſhe quitted the room. And being interrogat-
'ed, Whether there was any other, and what converſation there
'was that paſſed, which could lead Miſs Pirie to ſay, 'I am not in
'the bed, I am only ſtanding beſide it?' depones, That there
'was no other converſation, and ſhe ſuppoſes Miſs Pirie ſaid ſo
'in order to make the witneſs believe ſhe was not in bed.'

The witneſs being afterwards interrogated by Lord Boyle, de-
— p. 62. F. pones, '*That upon the firſt occaſion when ſhe felt the purſuers bodies*
'*one above the other, ſhe thinks they had nothing on but their ſhifts.*
'*And being interrogated, whether it was their naked bodies, or on*
'*their ſhifts which touched her? depones, She thinks both.*'

If your Lordſhips believe this witneſs, there is an end to the queſtion; for the petitioners muſt have been guilty of a moſt indecent and obſcene act, whether intended to gratify appetite or to excite it, or for ſome purpoſe different from either. The witneſs could not be miſtaken or deceived: her ſituation rendered either the one or the other impoſſible; her *causa scientiæ* is perfect. Nor will your Lordſhips, in peruſing this part of her depoſition, fail to remark the characters of truth and nature which it bears, in circumſtances apparently trivial in themſelves, and which a child could never have invented, but which are admirably calculated to bring conviction to the mind. The reſpondent alludes more particularly to the female artifices uſed by the petitioners, to perſuade the witneſs that Miſs Pirie was not in bed, or to prevent her from ſeeing preciſely the ſituation in which ſhe was. On the firſt occaſion, when it was dark, Miſs Woods addreſſed Miſs Pirie as if ſhe had not been in bed, obſerving, that ſhe would catch cold ſtanding there; and Miſs Pirie at the ſame time declared that ſhe was ſtanding by the bed ſide; and yet the witneſs was ſenſible that Miſs Pirie was all the while in bed. On the ſecond occaſion, Miſs Munro was deſired to go for barley-ſugar, for her own cough, that Miſs Pirie might have an opportunity of going out of the room unperceived; and when that expedient failed, ſhe was ordered to bring a glaſs of water to Miſs Woods. If theſe artifices do not indicate a conſciouſneſs of guilt, and an attempt to conceal it, the reſpondent is ignorant of the workings of the human heart. They exclude completely all the pretences reſorted to, both in the anſwers to the condeſcendence and in the petition, to account for the extraordinary nocturnal interviews between the petitioners, the occurrence of which could not have been denied, without the certainty of detection. If Miſs Pirie came to converſe with Miſs Woods upon ſchool-affairs, or to be reconciled with her after a quarrel, or to rub her back for the rheumatiſm, there would have been no occaſion for diſguiſe, and no motive to make uſe of it. But the eaſieſt and ſureſt method of diſcovering guilt, often ariſes from the precautions uſed to prevent diſcovery.

The evidence of Miſs Munro is checked by that of the nurſery-maid who brought her up, and to whom, as her mother was dead, it was moſt natural ſhe ſhould unboſom herſelf. She could not be aware, and indeed depones that ſhe was not aware, of the full criminality of the act; but ſhe was arrived at that period of life when ſhe muſt have known from her feelings, as well as from the habits

in which ſhe was brought up, that it was indecent and improper. She depones, that after the firſt occaſion, when ſhe was ſure that
State, p. 47. C. Miſs Pirie had been in the bed, ſhe mentioned the circumſtance to ‘ Mary Brown, the nurſery-maid at home, who has been long in ‘ the family of the witneſs's father. Depones, That Mary Brown's ‘ anſwer was, ‘ If it is true, it is dreadful;' and Mary Brown told ‘ the witneſs if it happened again ſhe ſhould ſpeak out and let it ‘ be known; and farther deſired the witneſs to let her know if it ‘ happened again.' And after having deſcribed what paſſed on
—— p. 48. D. the ſecond occaſion, ſhe depones, ‘ That the next time ſhe went to ‘ her father's, the nurſery-maid, Mary Brown, aſked her if any ‘ thing more had happened; and the witneſs told her juſt the ſame ‘ had happened, but without mentioning that it was day-light, or ‘ entering into any particulars: That Mary Brown ſaid that it was ‘ moſt dreadful, and could not the witneſs get a bed to herſelf; ‘ and ſhe added, that they ſhould be burnt.'

It appears from the teſtimony of Mary Brown, that at theſe two interviews Miſs Munro had given her preciſely the ſame information which ſhe has given your Lordſhips in this proof; and although Mary Brown is not another direct witneſs to the guilt of the petitioners, ſhe affords the moſt convincing evidence, if ſuch evidence were wanting, of the truth and accuracy of Miſs Munro; for if the ſtory had been invented, and told from malice, it could never have been repeated with ſuch a perfect coincidence of circumſtances.

—— p. 63. A. Mary Brown depones, ‘ That the family of Mr Munro came to ‘ town on the 1ſt of October laſt, and the witneſs came on Wed- ‘ neſday thereafter with the children: That Miſs Janet Munro ‘ was at that time at the ſchool of the purſuers, and that ſhe came ‘ to viſit her father on the Saturday immediately following, and ‘ ſtaid all night. Depones, That while the witneſs was attending ‘ the children, Miſs Janet called her twice into her room, and ‘ ſeemed anxious to get her alone: That this was about eleven ‘ o'clock at night, and while ſhe was putting the other children ‘ to bed. Depones, That when the witneſs went in to her the ſe- ‘ cond time, ſhe aſked her how ſhe liked the ſchool? and Miſs ‘ Janet anſwered, ‘ That ſhe liked it very well, but there was one “ thing very diſagreeable to her.' Depones, That the witneſs in- ‘ ſiſted upon knowing what it was; and Miſs Janet, after heſita- ‘ ting about a minute, and being like to cry, ſaid, ‘ that Miſs Pirie “ came to Miſs Woods' bed in the night.' Depones, That Miſs ‘ Janet

'Janet ſaid ſhe was awakened with a noiſe, and was diſturbed with
'the bed ſhaking, and could not get the bed-clothes kept on; and
'ſhe had ſpoken to Miſs Pirie, and deſired her to go away, for that
'ſhe could not get ſlept: That Miſs Pirie ſaid, that ſhe was ſtand-
'ing at the bed-ſide; and then Miſs Woods told her ſhe had better
'go away; and ſhe thinks theſe were the very words that Miſs
'Munro uſed. Depones, That Miſs Munro added, that Miſs Pirie
'was lying above Miſs Woods. Being interrogated, Whether ſhe
'told her that they lay ſtill, or that there was any motion be-
'tween them? depones, That ſhe cannot remember that. De-
'pones, That upon her aſking her a ſecond time about the ſhaking
'of the bed, ſhe told her that ſhe had again felt it ſhaking, and
'could not get the bed-clothes kept on, and that ſhe was in a hor-
'rible fright, and that this was at ſome interval after the firſt
'ſhaking; and ſhe told her that they were a long time in bed.
'Being interrogated, What ſhe ſaid to Miſs Munro, or what ad-
'vice ſhe gave her? depones, That the witneſs ſaid it was a dread-
'ful thing, and they were worſe than beaſts, and deſerved to be
'burnt if it was true; and Miſs Munro anſwered, 'O yes Mary,
"it is perfectly true;' and the witneſs told her if ever ſhe ob-
'ſerved the ſame thing happen again, to be ſure to let her know.
'Being interrogated, When the witneſs ſaw Miſs Munro again?
'depones, That ſhe ſaw her again on the following Saturday,
'when ſhe came home and ſtaid all night. Being interrogated,
'If ſhe had any converſation with her on this occaſion? depones,
'Yes: That Miſs Munro came into the nurſery in the afternoon
'to inquire after the children, when the witneſs aſked her if any
'thing improper was going on at the ſchool; that Miſs Munro an-
'ſwered, 'Yes, it was as bad as ever, and Miſs Pirie had again
"come to Miſs Woods' bed in the ſame manner they had been be-
"fore.' Depones, That ſhe ſaid ſhe had lain long awake, and had
'coughed and turned herſelf to make them underſtand ſhe was
'awake: That ſhe ſaw Miſs Pirie in the bed: That Miſs Woods
'deſired her to get up, and get a glaſs of water, and that ſhe did
'ſo, but when ſhe came back with it Miſs Pirie had ſlipt out of
'the room. Depones, That ſhe told her that when ſhe returned
'into bed again, Miſs Woods ſaid, 'You ſeem to have got a bad
"cough; you had better go to a drawer and get ſome ſugar:'
'That ſhe does not remember whether ſhe ſaid ſhe had or not, but
'that ſhe fell aſleep again. Being interrogated, Whether the
'witneſs ſaid any thing more to Miſs Munro at this time? de-

'pones,

‘ pones, Yes: It is a very wicked thing, and Miſs Pirie certainly
‘ is a man.’

The next witneſs called by the reſpondent was Miſs Jane Cumming, againſt the credibility of whoſe evidence various objections have been ſtated, founded on her being a native of Hindoſtan, grandaughter to the reſpondent, and the firſt perſon who diſcloſed the ſtory, joined to the ſuſpicious manner in which ſhe is ſaid to have delivered her depoſition, and certain pretended contradictions into which ſhe has fallen. All theſe objections will be examined in the ſequel; but, in the mean time, let the import of her evidence be attended to as a witneſs whom your Lordſhips have found to be competent, who has been educated, and has always lived under the eye of a reſpectable family, whoſe character was never impeached until the petitioners, after the commencement of the preſent action, endeavoured to do ſo, and to whoſe prejudice nothing is ſaid except in ſo far as blame is imputed to her for the evidence which ſhe has given againſt them. She depones, ‘ That ſhe is paſt ſixteen years
State, p. 69. F.
‘ of age. Depones, That ſhe was a boarder at the ſchool of the
‘ purſuers, and went there in November 1809: That there were
‘ ſummer holidays while ſhe was there: That ſhe thinks the
‘ holidays began on the 20th of June, and that the young ladies
‘ left the ſchool during theſe, but the deponent remained at ſchool
‘ Depones, That during the holidays, Miſs Pirie and Miſs Woods
‘ ſlept together, and the deponent ſlept in the ſame room, in a bed
‘ at the foot of theirs: That before the holidays began, the depo-
‘ nent ſlept with Miſs Pirie, and had ſo done from the firſt
‘ time that ſhe went to ſchool. Depones, That during theſe
‘ holidays, while Miſs Pirie and Miſs Woods ſlept together, the
‘ witneſs was oftener than once diſturbed early in the morning
‘ Interrogated, What kind of diſturbance it was? depones, That
‘ they were ſpeaking and kiſſing, and ſhaking the bed. Depones
‘ That after the holidays, the witneſs again ſlept with Miſs Pirie
‘ Depones, That Miſs Woods, after the holidays, went to ſleep in
‘ another room: That ſhe does not recollect who firſt ſlept with
‘ her, but Miſs Hunter was her bedfellow when ſhe Miſs Hunter
‘ came to the ſchool; and ſhe continued to be ſo till Miſs Munro
‘ came, and then Miſs Munro ſlept with her. Being interrogated
‘ If, during the time while the witneſs ſlept with Miſs Pirie, Miſs
‘ Woods came to her bed? depones, That ſhe did. And being in-
‘ terrogated if, ſhe came oftener than once? depones, That ſhe did
‘ Being interrogated, If, on any of theſe occaſions the witneſs was
‘ waker

'wakened from her ſleep? depones, She was. Interrogated, What 'it was that wak'ned her; and what did ſhe obſerve on the firſt 'occaſion of her being ſo wakened? depones, That ſhe only heard 'them whiſpering, and kiſſing one another; and theſe were the 'only circumſtances ſhe obſerved upon her wakening. Interro-'gated. When Miſs Woods came next time to Miſs Pirie's bed, What 'did the witneſs obſerve? depones, She had come different times, 'when the witneſs only heard kiſſing and whiſpering. Interrogated, 'If, at any time when Miſs Woods came to Miſs Pirie's bed, the wit-'neſs heard any thing more than kiſſing and whiſpering? depones, 'Yes. Interrogated, What was it? depones, She heard Miſs Pirie 'ſay one night, 'O you are hurting me.' Interrogated, If ſhe 'heard or obſerved any thing more? depones, She heard Miſs 'Woods one night aſk Miſs Pirie if ſhe was hurting her. Interro-'gated, If, on any of thoſe occaſions, Miſs Woods was in the bed 'with Miſs Pirie and the witneſs? depones, Yes, both times. In-'terrogated, How Miſs Woods and Miſs Pirie were lying on thoſe 'occaſions? depones, One of them was lying above the other. In-'terrogated, Were they in that ſituation when Miſs Pirie ſaid, 'O "you are hurting me,' as above deponed to? depones, Yes. In-'terrogated, and deſired to mention all that ſhe heard, ſaw, felt or 'obſerved on any occaſion, when Miſs Woods came to Miſs Pirie's 'bed, and to tell all that ſhe knows of the matter, as fully and diſ-'tinctly, and as nearly in the order of time as ſhe can? depones, 'That ſhe does not remember the different times: That ſhe has been 'awakened different times by their kiſſing and whiſpering, but did 'not know what: That ſhe heard Miſs Pirie ſay one time, 'O you "are hurting me;' and ſhe heard Miſs Woods one time aſk Miſs 'Pirie if ſhe was hurting her, and Miſs Pirie ſaid, No; and ſhe heard 'Miſs Pirie ſay one night, 'You are in the wrong place,' and Miſs 'Woods ſaid, 'I know;' and Miſs Pirie ſaid, 'Why are you doing "it then?' and Miſs Woods ſaid, 'For fun;' and ſhe wakened one 'night with a whiſpering, and heard Miſs Pirie ſay, 'O do it, dar-"ling,' and Miſs Woods ſaid, 'Not to night;' Miſs Pirie aſked 'her two or three times, and then Miſs Woods ſaid, 'O not to "night, for it may waken Miſs Cumming, and perhaps Miſs Stir-"ling;' then Miſs Pirie preſſed her again to come in, and ſhe 'came in, and ſhe lay above Miſs Pirie: That Miſs Woods began 'to move, and ſhe ſhook the bed, and ſhe heard the ſame noiſe as 'ſhe heard in the holidays. And being deſired by the Lord Juſtice-'Clerk, to deſcribe the kind of noiſe as near as poſſible, depones,

‘ That putting one’s finger into the neck of a wet bottle, is the
‘ likeſt deſcription ſhe can give of it: Then the witneſs aſked Miſs
‘ Pirie what was ſhaking the bed ſo, and Miſs Pirie anſwered, ‘ No-
“ thing;’ and when ſhe ſo aſked Miſs Pirie what was ſhaking the bed,
‘ ſhe felt Miſs Woods move over to the other ſide of the bed; and
‘ ſhe thinks it was that night ſhe heard Miſs Woods ſay, ‘ I would
“ like better to have ſomebody above me:’ She wakened another
‘ night, and ſhe heard Miſs Woods ſay, ‘ Now Jane, will you pro-
“ miſe me one thing?’ and Miſs Pirie anſwered, ‘ I don’t know;
“ What is it?’ and then Miſs Woods ſaid, ‘ Now Jane, will you
“ promiſe not to come to my bed, or take me in your arms till the
“ holidays?’ and Miſs Pirie replied, ‘ O Mary-Anne don’t aſk me,
“ for you know I could not keep it if I were to promiſe;’ and then
‘ Miſs Woods ſaid, ‘O do promiſe, and I’ll take care you ſhall keep
“ it;’ but Miſs Pirie would not promiſe; but Miſs Woods ſaid, as if
‘ Miſs Pirie had promiſed, ‘ Nor will I take you in my arms, or
“ come to your bed till the holidays; but you may kiſs me, and I
“ will kiſs you;’ and then Miſs Woods went away, and ſhe does not
‘ recollect any thing elſe that happened on this occaſion; but on the
‘ former night when the witneſs ſpoke, the witneſs lay awake a long
‘ while, and complained that ſhe could not ſleep, and Miſs Pirie de-
‘ ſired her ſeveral times to turn her face to the wall, and try to
‘ ſleep, but the witneſs did not turn, and ſaid, that ſhe could not
‘ ſleep, and then Miſs Pirie turned and ſaid, ‘ Now you muſt turn
“ as I have turned,’ and then ſhe heard Miſs Woods go out of the
‘ room, and when Miſs Woods came to the door, Miſs Pirie cough-
‘ ed, that the witneſs might not hear it opened; and a little while
‘ after Miſs Woods was gone, Miſs Pirie ſaid to the witneſs, Have
‘ you heard Miſs Woods cough to night? and the witneſs ſaid, No; in
‘ a little Miſs Woods coughed, and Miſs Pirie ſaid, ‘ O there ſhe’s
“ coughing, poor ſoul, I muſt go and ſee her;’ and ſhe went: when
‘ Miſs Woods came to bed that night, the witneſs felt them both
‘ lift up their ſhifts.’

State, p. 73. B. Afterwards ſhe depones, ‘ That once or twice when Miſs Woods
‘ had come to Miſs Pirie’s room, ſhe heard Miſs Woods ſay to Miſs
‘ Pirie, ‘ Good-night darling, I think I have put you in the way
“ to get a good ſleep to night;’ and ſometimes Miſs Pirie would
‘ ſay, ‘ No;’ and then Miſs Woods continued; other nights Miſs
‘ Pirie did not ſay any thing, and then Miſs Woods went
‘ away.’

In

In a ſubſequent part of her evidence, being ‘ interrogated, and ‘ deſired to mention the circumſtances from which ſhe became ‘ certain that the purſuers were indecent together at that meeting; depones, That when Miſs Woods came into bed, ſhe felt ‘ them both take up their ſhifts, and ſhe felt Miſs Woods move ‘ and ſhake the bed, and Miſs Woods was breathing ſo high and ‘ ſo quick. Interrogated, depones, Miſs Woods was lying above ‘ Miſs Pirie at this time, and ſhe heard the ſame noiſe ſhe has ‘ already deſcribed, and ſhe thinks it was the ſame night ſhe heard ‘ Miſs Woods ſay, ſhe would rather have ſomebody above her; ‘ and that theſe are all the circumſtances ſhe recollects at preſent.’ State, p. 82. A.

The ſcenes acted in Miſs Pirie's bed, as deſcribed by this witneſs, are exactly ſimilar to thoſe which took place in Miſs Woods's bed, as they are detailed in the evidence of Miſs Munro; but the account of the former is fuller than that of the latter, which is accounted for in a very ſatisfactory manner. Miſs Munro is ſomewhat deaf, occaſionally in both ears, and generally in one, as is proved by her own evidence, and the evidence of Miſs Stevenſon. Although ſhe heard the petitioners whiſpering, therefore, ſhe was unable to make any ſenſe of what they ſaid, and conſequently the dialogue is loſt, which was probably as unequivocal as that which occurred in Miſs Pirie's bed. For the ſame reaſon, they might have kiſſed each other in the manner deſcribed by Miſs Cumming, without its being obſerved by Miſs Munro. —— p. 62. and 100.

There is one circumſtance in Miſs Cumming's account, which will not be paſſed over unnoticed, namely, the employment of a ſimilar artifice, to conceal from Miſs Cumming, when ſhe was known to be awake, the circumſtance of Miſs Woods being in bed; an artifice utterly inexplicable, on the ſuppoſition of innocence, but the natural offspring of cunning and guilt.

Another ſtriking coincidence occurs between the teſtimony of Miſs Cumming and Miſs Munro, and which, while it confirms the truth of both, bears hard on the petitioners, relative to the agreement between theſe young ladies to let the petitioners know they had been detected, after which thoſe nocturnal viſits were diſcontinued. Miſs Munro depones, ‘ That Miſs Cumming and the deponent ‘ agreed that they would take ſome opportunity of giving a hint ‘ to the purſuers that they were aware of what was going on; and ‘ one day when they were out walking, Miſs Cumming ſaid to the ‘ deponent, that ſhe was ſo tired with being diſturbed in the night, —— p. 49. G.

‘ that

'that she was hardly able to go on with her lessons, and that on 'returning from their walk she would complain of it; and accord- 'ingly, when they returned, Miss Cumming said to Miss Pirie, 'that she was excessively tired with being disturbed in the night- 'time; upon which Miss Pirie's face grew very red, and she turn- 'ed her back, and soon afterwards went out of the room; and that 'Miss Cumming then observed to the deponent, 'Do you see how "guilt is on her face?"

She is confirmed by Miss Cumming, who gives precisely the
State, p. 72. H. same account of the story. She depones, 'That Miss Munro and 'the witness wished to let them know that they knew it, and were 'to have spoken of it at breakfast time, but they lost courage: 'That on the same day, when they were out walking, she told Miss 'Munro that she would complain of it, and of being tired, and 'that she could not get sleep; and she desired Miss Munro to put 'the question to her, Did you not sleep well, and that the witness 'would answer, She could not sleep, for the bed was shaking so; and 'when they came in from their walk, Miss Pirie was in the room, 'and the witness did complain, and the conversation took place as 'had been agreed on. Depones, That Miss Pirie staid in the room 'for some time, but when she saw that they persisted in it, she 'left the room with her face quite red; and the witness said to 'Miss Munro, 'O, do you see guilt in her face."

The petitioners themselves, although they may talk of Miss Cumming having instilled suspicions into Miss Munro, and of having created a bias in her mind,—allegations to be fully considered in the sequel, never presumed to charge her with an intention to deceive. If the conversation then took place which she repeats here so distinctly, and with regard to which she could not be mistaken, the respondent would ask, Why did Miss Pirie enter into no explanation of a thing which, according to her, could have been so easily explained? Why did her face grow red? Why did she leave the room in silence? Miss Pirie says, that she does not recollect this, and that your Lordships, on that account, ought not to believe it. But whether this be a satisfactory solution of the difficulty, it is left for your Lordships to judge.

But without commenting farther upon the evidence of these two ladies at present, which, if believed, confessedly establishes all the facts set forth in the condescendence, the respondent must now request the attention of your Lordships to other circumstances in the proof, tending to corroborate this direct testimony.

Before

Before the proof was led, and while it was yet uncertain whether the witneſſes would be able to give a diſtinct account of what had paſſed in their reſpective beds, the petitioners found it convenient to admit in their anſwers to the condeſcendence, that they were occaſionally in the practice of viſiting each other in the night. By that admiſſion they probably hoped, that the effect of all equivocal evidence would be removed, as your Lordſhips would not aſcribe to an improper motive what could be accounted for in any other way. Unfortunately, however, for the petitioners, the witneſſes had too good means of knowing the truth, to allow this expedient to be of the ſmalleſt uſe. There was no equivocal evidence at all; and their admiſſions. therefore only exhibit an unſucceſsful attempt to take off the effect of circumſtances which they were conſcious could be proved, and to confirm the teſtimony of thoſe witneſſes by whom they are proved.

In the *firſt* place, as to the general frequency of Miſs Woods' preſence in Miſs Pirie's room. and at her bed during the night, the petitioners had good reaſon to fear, that this might poſſibly have been noticed by ſome of the other girls who ſlept in the room beſides Miſs Cumming. It was neceſſary, therefore. for the petitioners to provide ſome plauſible explanation, if poſſible, for that circumſtance, ſince they could not aſcertain that it had not been ſo obſerved. Accordingly, in article third of their anſwers to the condeſcendence for the reſpondent, it is ſaid, 'The defender is 'pleaſed to require the purſuers explicitly to confeſs or deny this 'article. But the article conſiſts of different parts; 1*ſt*, It is ſaid, 'that between the end of July and beginning of November, Miſs 'Woods, on various nights, *went into the room* in which Miſs Pirie 'and Miſs Cumming ſlept. There can be no doubt about this; 'becauſe, whenever Miſs Pirie was in bed before Miſs Woods had 'left her aunt's room, where ſhe always ſupped, Miſs Woods of 'neceſſity paſſed through the room where Miſs Pirie and Miſs 'Cumming ſlept. But it is not immaterial, that on theſe occa'ſions Miſs Woods was in *her day dreſs*, as ſhe did not undreſs till 'ſhe went to the other end of the houſe. The purſuers will tell 'the defender alſo, that on theſe occaſions, Miſs Woods ſome'times ſtopped to converſe with Miſs Pirie, having had no other 'opportunity in the courſe of the day.'

On this the reſpondent will only obſerve, 1. That it admits and attempts to account for *nocturnal converſations of Miſs Woods with Miſs Pirie;* 2. That it is moſt prudently vague. For, (1.) it

 does

does not mention any thing as to *the hour* when Miſs Woods had theſe nocturnal converſations with Miſs Pirie, except that it was after ſupper; (2.) It does not ſay whether ſhe had a candle with her, or converſed *in the dark*.

Here, therefore, your Lordſhips have a vague ſtatement of interviews, to which any thing regarding Miſs Woods' preſence at any hour of the night, though without light, at Miſs Pirie's bed may be aſcribed.

It appears, that the other girls ſay nothing as to the preſence of Miſs Woods in any way whatever. The reſpondent is confident, however, that your Lordſhips will not ſuffer this ſtatement of the petitioners to be withdrawn or overlooked, and particularly its evident adaptation to whatever might come out of the truth.

The petitioners ſay, however, that it is *proved*; but this is a miſtake, for,

1. It does not appear that it was *neceſſary* for Miſs Woods to paſs through Miſs Pirie's room. She might, and naturally would, particularly if the hour was late, have gone by the ſtair.

2. Mrs Woods does not depone that Miſs Woods did *in fact* go through Miſs Pirie's room on leaving her.

3. There is not a particle of evidence on any one *ſuch* occaſion that Miſs Woods did hold any converſation with Miſs Pirie. And particularly, Mrs Woods does not ſay ſhe obſerved her niece go into Miſs Pirie's room, or heard converſation on her doing ſo. In ſhort, all that is proved is, that Miſs Woods ſupped with her aunt, and *might* go through Miſs Pirie's room in going to her own after ſupper. Now, whether *this* is ſufficient to do away the effect of the admiſſion contained in the article of the anſwers, and calculated to meet what evidence might come out regarding them, your Lordſhips will judge.

It is, however, the more particular admiſſions of the petitioners to which the reſpondent has principally to requeſt your Lordſhips' attention, becauſe they ſeem to her very important as well as curious, and ſuch as afford a moſt ſtriking and complete corroboration of Miſs Cumming's teſtimony.

Your Lordſhips will obſerve, that on this laſt occaſion Miſs Woods, when preſſed to the tribadian pleaſure, is ſtated by Miſs Cumming to have ſaid to Miſs Pirie, 'Not to-night, for it may 'awaken Miſs Cumming, *and perhaps Miss Stirling*.' The reaſon of this probably was the lateneſs of the hour, or advanced ſtate of the night; but whatever it was, it appears there was ſome peculiar reaſon to apprehend that Miſs Stirling, on that night, might

have made ſome obſervation on the petitioners conduct. Accordingly, the petitioners not having communicated with Miſs Stirling, could not be ſure that ſhe had not obſerved the preſence of Miſs Woods, and part at leaſt, nor could they be ſure what part, of the circumſtances of the tranſaction. It was therefore exceedingly hazardous for them to make a general denial of thoſe circumſtances, ſince, though they could pretend perjury againſt *one* witneſs, it was impoſſible to plead it againſt more than one. It was neceſſary, in order to meet ſuch a poſſibility, that they ſhould give ſome account that would appear to explain any thing that Miſs Stirling might have obſerved in this inſtance. Accordingly, your Lordſhips ſee, that they have given an account which is calculated for that purpoſe; but withal, like all *falſe* explanations, contains circumſtances ſtrongly indicative of the truth. The petitioners now would have your Lordſhips to believe, that they gave this account out of *pure candour and ſuperfluous love of truth!* But what is there that they do not think they may impoſe upon your Lordſhips in this caſe? The averment is perfectly ridiculous.

The ſtatement in the anſwers to the condeſcendence is in theſe words: 'It was mentioned, in deſcribing the houſe, that the par-
'tition between Miſs Pirie's room and that of Miſs Woods, is a
'mere lath partition, only four inches thick. It happened, that
'Miſs Woods on one night ſat up late in her aunt's room, and,
'as the differences between the parties were then at their height,
'Miſs Woods and her aunt talked a great deal, by which Miſs
'Pirie was kept awake. When Miſs Woods at laſt was paſſing
'through Miſs Pirie's room, the latter called to her to come and
'tell her what had been the matter. Miſs Woods came to the
'bed-ſide, where ſhe was equally cloſe to Miſs Stirling's bed. Miſs
'Pirie perceived that ſhe had been crying, and urged her to tell
'the reaſon; and being herſelf much moved, thinks that ſhe kiſſ-
'ed her cheek, which, it is humbly thought, was quite natural and
'innocent, conſidering their friendly and familiar habits, and the
'warm temper of Miſs Pirie. Miſs Woods declined to tell the
'cauſe of her emotion; and ſome converſation followed, conſiſt-
'ing in an attempt of perſuaſion on the one ſide, and refuſal upon
'the other, the particular terms of which it is evidently quite
'impoſſible to recollect.

'But Miſs Cumming waked by the *ſhaking of the bed.* As it is
'moſt certain that Miſs Woods was ſtanding on the *floor with her*
'*clothes on*, and with ſufficient light in the room to be ſeen by
'Miſs Cumming, it might ſeem very unneceſſary to go farther in

'anſwering.

‘ anſwering the ſtatement. But the purſuers wiſh to ſtate every
‘ thing by which the imagination of Miſs Cumming might be aſ-
‘ ſiſted. She knows well that Miſs Pirie was much afflicted with
‘ rheumatiſm, and that ſhe had frequently employed *the ſervant to*
‘ *rub her back* on that account. Before Miſs Woods went away,
‘ Miſs Pirie complained of rheumatiſm, and Miſs Woods offered
‘ to rub her back a little, which ſhe did for a minute or two. Miſs
‘ Cumming ſtarted as if out of her ſleep, ſaying, what makes the
‘ bed ſhake, and jumped out of bed; at which the purſuers were
‘ ſomewhat ſurpriſed at the time, but did not think of accounting
‘ for it. Miſs Woods was then ſtanding with her clothes on, and
‘ went quietly out of the room. But it was *after* Miſs Woods was
‘ gone, and *not before*, that Miſs Pirie deſired Miſs Cumming to
‘ turn to the other ſide of the bed. As to this, it is very hard
‘ that Miſs Cumming ſhould force Miſs Pirie to remind her of
‘ what Miſs Pirie would moſt anxiouſly have kept to herſelf, that
‘ this requeſt as to the mode of turning was only what ſhe uni-
‘ formly obſerved with Miſs Cumming, for reaſons which ſhe has
‘ no deſire farther to explain.

‘ Having given this full explanation of the other particulars, the
‘ purſuers have no heſitation in adding, that Miſs Pirie, hearing
‘ Miſs Woods ſeized with a fit of coughing, roſe and carried ſome
‘ thing to her to ſtop it, and *inſtantly* returned to bed.’

Here your Lordſhips have an attempt to account for Miſs Woods being preſent at Miſs Pirie's bed,—in the dead of night,—without a candle,—for whiſpering,—for perſuaſion by Miſs Pirie,—for rubbing, or even clapping of bodies,—for ſhaking the bed,—for Miſs Cumming's aſking what made the bed ſhake,—for a perſon (*i. e.* Miſs Woods) thereupon jumping out of Miſs Pirie's bed,—and going out of the room,—for Miſs Pirie bidding Miſs Cumming turn,—for Miſs Pirie going afterwards to Miſs Woods;—in ſhort, for every material circumſtance that it was poſſible for Miſs Stirling, if ſhe had wakened, to have obſerved.

It happened, however, here, as in the former inſtances, that Miſs Stirling ſlept ſound, and obſerved nothing at all. But is not to be overlooked, that the petitioners themſelves, before that could be known to them, gave ſuch an account of the matter as has been exhibited, containing a *plauſible and explanatory admission of almoſt every one circumſtance to which Miſs Cumming depones, that could poſſibly have been obſerved by any other perſon than Miſs Cumming herſelf?* Is that nothing? and in a caſe, too, where they impute direct wilful perjury and lying invention to Miſs Cumming.

The

The reſpondent is confident, no ingenuity or boldneſs of argument will ever perſuade your Lordſhips to adopt ſuch an opinion.

But, ſay the petitioners, here again the *truth* of their account is *proved* in its material circumſtances. To this, the reſpondent heſitates not an inſtant to give a flat denial. The truth of their account is not ſo proved, nor any thing like it. Nothing earthly is proved regarding this point, but that on *ſome one* night in September, Miſs Woods ſupped with her aunt, and ſat up very late in her day clothes, ſo far as Mrs Woods recollects; that they had a diſpute together; and that ſometimes Miſs Pirie had had the rheumatiſm, and been rubbed for it. Abſolutely nothing elſe. It is not even proved that on that night Miſs Woods *de facto* went through Miſs Pirie's room. Mrs Woods does not even ſay that much, far leſs that on that night ſhe heard any converſation immediately on Miſs Woods leaving her, or perceived any one indication of the ſtory the purſuers offer to your Lordſhips. It is utterly erroneous to ſay that the truth of the purſuers ſtory is proved. Nothing is proved, but one or two immaterial circumſtances, nowiſe neceſſarily connected with the reſt, and juſt ſuch as perſons concocting a pretended explanatory ſtory always have recourſe to. They look about for ſomething on which they may bottom their pretences, and find juſt ſuch circumſtances as theſe, circumſtances in themſelves utterly and manifeſtly inconcluſive.

But the reſpondent has to requeſt your Lordſhips' attention ſtill more particularly to the ſtatement made for the petitioners, and with an addition to be immediately mentioned, ſanctioned by their own particular correction and approbation; becauſe it appears to the reſpondent that ſome examination of them will ſhew very clearly, that, inſtead of the *truth* of this explanation being proved, its *falſehood* is certain, and that with all the deliberate art as well as boldneſs of the petitioners, they have offered to your Lordſhips a ſtory which is manifeſtly untrue. If *that* be the caſe, the reſpondent need not draw the concluſion: If they, in their defence, clamouring perjury againſt the witneſſes that gave teſtimony againſt them, are themſelves detected in conjunct and deliberate falſehood with regard to the moſt important part of the facts in diſpute; if they are detected offering to your Lordſhips a falſe explanation of deciſive circumſtances that are ſworn againſt them, there is ſurely an end of their cauſe.

Now what is it they ſay?

1. That the various things they admit, happened on the night Miſs Woods ſat up late with her aunt. Now, of this there is, as

already obſerved, an entire failure of evidence. Mrs Woods does not ſay Miſs Woods on that night went through Miſs Pirie's room; and ſtill leſs does ſhe ſay, that ſhe herſelf, immediately after Miſs Woods left her on that night, heard Miſs Pirie call Miſs Woods,—or heard any converſation between them,—or heard any creaking of the bed,—or any exclamation by Miſs Cumming, —or Miſs Cumming jump out of bed in Miſs Pirie's room,—or Miſs Pirie get out of bed and return, all of which, the petitioners ſay, took place that night, immediately after Miſs Woods left her aunt. Notwithſtanding that, by that time, ſhe could not have got to bed, and the thinneſs of the partition, Mrs Woods does not ſay that ſhe heard any thing at all from Miſs Pirie's room that night.

2. The petitioners ſay, 'Miſs Pirie perceived that ſhe (*i. e.* Miſs 'Woods) *had been crying*, and being herſelf much moved, thinks 'that ſhe kiſſed her cheek, which, it is humbly thought, was quite 'natural.' Now, your Lordſhips will obſerve, that although the cauſe of the kiſſing is ſaid to have been the perception of *crying*, Mrs Woods however does not ſay that her niece *had been crying*. She only ſays they had a difference.

3. 'Miſs Pirie was much affected with the rheumatiſm, and 'frequently employed her ſervant to rub her back. Before Miſs 'Woods went away Miſs Pirie complained of rheumatiſm, and 'Miſs Woods offered to rub her back a little, which ſhe did for a 'minute or two.' Your Lordſhips will obſerve, that Miſs Pirie's rheumatiſm, and the rubbing for it, is much exaggerated; for even Charlotte ſays only, 'that ſhe knows Miſs Pirie had a pain in her 'back, for ſhe has been employed to rub it.' But truly as to Charlotte's evidence, it would be ridiculous to pay any regard whatever to it; and that of Mrs Campbell, your Lordſhips will obſerve, refers to a former period; and Miſs Cumming does not prove what the petitioners ſtate. Suppoſing, however, that Miſs Pirie ſometimes had rheumatiſm, it is not very probable ſhe had it *at that particular time;* of which there is no evidence. But further, is it credible that ſhe ſhould be rubbed for it by Miſs Woods at ſuch an hour? It is ſaid Miſs Munro's evidence ſhews that Miſs Woods was once rubbed when in bed by Miſs Pirie; but that was 'juſt after Miſs Woods had gone to bed;' and Miſs Woods was then ill,—circumſtances that made the thing not unnatural, but which are not to be found in Miſs Pirie's caſe, in which the pretence of rubbing for the rheumatiſm is quite incredible.

4. 'Miſs Cumming ſtarted as out of her ſleep, ſaying, 'What "makes the bed ſhake?" and jumped out of bed; at which the 'petitioners

'petitioners were ſomewhat ſurpriſed at the time, but did not 'think of accounting for it. Miſs Woods was then ſtanding with 'all her clothes on, and went quietly out of the room.'

This was the firſt account given by the petitioners, which is manifeſtly intended to account for a queſtion aſked by Miſs Cumming, 'What makes the bed ſhake?' and then a perſon jumping out of Miſs Pirie's bed, and going out of the room.

But this is not all. It obviouſly imputes to Miſs Cumming an affectation of ſurpriſe and alarm at the ſhaking of the bed, and makes her *jump out of bed*. Further, it expreſsly ſays, that the petitioners were *ſurprised* at her doing ſo, and *did not think of accounting for it, i. e.* of imputing it to Miſs Cumming's pretended alarm. So ſtanding the ſtory, it is in itſelf liable to very complete detection. That Miſs Cumming waked out of her ſleep, ſhould have immediately *taken up a plot* againſt the petitioners, and produced ſurpriſe and alarm, was quite incredible. Then how could ſhe *jump* out of bed when ſhe was lying between Miſs Pirie and the wall? Why did the petitioners not tell her what ſhook the bed, when ſhe pretended to be alarmed at it, and jumped out of bed? How was Miſs Cumming replaced beyond Miſs Pirie, before ſhe was told to turn to the wall, to which a ſudden tranſition was made in the petitioners' anſwers? Theſe were manifeſt difficulties, convicting the ſtatement of falſehood. But your Lordſhips are told by the counſel for the petitioners, in whom the reſpondent has perfect confidence, that, *before* the proof, the petitioners wrote upon the margin of a copy of the anſwers what they thought afforded ſome ſuch explanation of theſe difficulties. It would have been correct, perhaps, to have exhibited the preciſe words of this explanation; but it is enough for the reſpondent to look at the ſubſtance, as ſtated in the petition.

It was in this way written by the petitioners, 'That Miſs Cum-'ming having ſtarted as from her ſleep, jumped out of the bed 'for the purpoſe, or on the pretence of a neceſſary occaſion, and 'having got out at the foot of the bed, went round to the ſide, 'and afterwards went in by that ſide, climbing over Miſs Pirie.'

Now, it is ſubmitted, in the *firſt* place, That this is inſufficient to remove the difficulties of the former ſtatement. But, *ſecondly*, It is groſsly inconſiſtent with what the petitioners had previouſly ſtated to their counſel, who had ſtated it to the Court, and, it is not ſaid, had ſtated it without full authority. The petitioners had ſaid, that Miſs Cumming, after ſtarting as if from ſleep, jumped

out

out of bed; that they *did not think of accounting for this;* that they were *surprised* at it; manifeſtly inſinuating, that Miſs Cumming affected alarm at the ſhaking of the bed, and *for that reaſon had jumped out of bed*; and this ſtatement was formally laid before the Court. Then they thought better of it, and they tell your Lordſhips that Miſs Cumming *got out of bed for the purpoſe, or on the pretence of a neceſſary occaſion*, (they ſtill uſe the word *jumped*, in order to diſguiſe the inconſiſtency, but its inapplicability is manifeſt,) that *ſhe got out by the foot of the bed*, and got in by climbing over Miſs Pirie. Here is flat inconſiſtency. If the laſt account had been true, the firſt never would have been given. There is a manifeſt equivocation in attempting to get rid of a falſe and detective explanation. They had, after making it, pondered well their own declaration, and diſcovered the detective abſurdities involved in it; and then they endeavoured to cure this by a new ſtatement, which only makes the matter worſe. This, your Lordſhips know well, is juſt the uſual fate of perſons who attempt to conceal the truth by falſe explanation.

5. 'Miſs Pirie, hearing Miſs Woods ſeized with a fit of coughing, roſe and carried ſomething to her to ſtop it, and inſtantly returned to bed.' This, your Lordſhips will obſerve, was juſt after Miſs Pirie, according to the petitioners' account, was rubbed for the rheumatiſm in her bed, in the dead of night, or at the early dawn. She immediately gets up in order to carry ſomething to Miſs Woods to ſtop coughing! Your Lordſhips will judge how far this is probable.

The ſame key ſerves for the admiſſions with regard to Miſs Munro. In anſwer to the third article of the condeſcendence, it
MS. p. 162. is ſaid, 'Miſs Pirie generally ſat up pretty late, both from other cauſes, and for a reaſon to which it is with pain ſhe alludes, that ſhe would not have choſen Miſs Cumming for a bedfellow, if it had been in her power to arrange matters otherwiſe. It has alſo been explained, that Miſs Pirie, after adjuſting her head dreſs, waſhing her hands, &c. in the dreſſing-room, neceſſarily paſſed through Miſs Woods room in going to her own. On theſe occaſions ſhe had always a candle with her, which ſhe ſet down lighted, and generally had on a *petticoat*, *wrapper*, *ſtockings* and *ſhawl*. And it is true, that ſometimes when ſhe found Miſs Woods awake, ſhe ſat down to converſe with her, and has ſometimes gone there on purpoſe when ſome diſagreement had ariſen in the courſe of the day, upon which ſhe had had no opportunity of coming to an explanation.

'The

'The purſuers preſume, this is an explicit anſwer to the ſtate-
'ment. But leſt the defender ſhould think ſhe makes a diſcovery
'of great conſequence, they will tell her farther, that it is not im-
'poſſible, that on ſome of theſe occaſions, Miſs Pirie, in the dreſs
'above mentioned, with the candle ſtanding on the drawers, and
'*five young ladies in the room*, may, in place of ſitting erect upon the
'bed, have reclined, and even partly covered herſelf with the
'blanket in cold weather, while ſhe continued her converſation
'with Miſs Woods.'

And in anſwer to the twelfth article of the condeſcendence, the petitioners ſay. 'It is believed, that on one occaſion Miſs Pirie
'had a very ſerious diſpute with Miſs Woods; and being very un-
'happy about it, after ſhe was in bed, roſe and went in her night-
'gown and petticoat, (which had always a *bunch of keys* faſtened
'to it, rather an unlikely alarm to be carried about) and awoke
'Miſs Woods, ſaying ſhe could not ſleep till they were friends.
'They had then ſome converſation; and it is true that they
'talked low, to avoid waking Miſs Munro. But, as already ſaid,
'it is not true that ſhe is deaf.'

In this caſe, as in the former, your Lordſhips have the ſame machinery prepared to take off the effect of Miſs Munro's evidence altogether, if ſhe had not been able to give a diſtinct account of what paſſed in her bed, and alſo the evidence of any other girl in the room, who might have been adduced in corroboration of Miſs Munro. If Miſs Munro had been half awake, and had recollected indiſtinctly that Miſs Pirie had been in bed, but without knowing at what time of the night it was, how long ſhe remained, or the full and minute detail of the proceedings between them, this explanation might have been ſucceſsful. And holding Miſs Munro's ſtory to be true, no girl in the room, however wide awake and attentive, could have deponed to a circumſtance which might not have been accounted for by the explanation here given. Nothing can be plainer, therefore, than that it was deviſed to meet theſe contingencies. The petitioners admit, that Miſs Pirie came to Miſs Woods's bed during the night,—that ſhe reclined upon the bed,—that ſhe covered herſelf at leaſt on one occaſion with the blanket, and that ſhe and Miſs Woods whiſpered. The candle and the bunch of keys have ſince been retracted, ſo that here is an acknowledgment of the leading facts in Miſs Munro's account, leaving out the circumſtances which infer guilt. The abſurdity and incredibility of the account which they give of the motive by which the petitioners account for this ſtory, re-

quire no comment. To talk of Miſs Pirie having been employed in adjuſting her head-dreſs at day-break, or coming to diſcuſs ſchool affairs at that hour, or endeavouring to procure a reconciliation before ſhe fell aſleep, when the alarm bell was to ring at ſeven, or to rub Miſs Woods's back for the rheumatiſm, for Miſs Woods, too, is ſaid to have been affected with this diſtemper, are pretences too ludicrous to be mentioned; yet theſe are the only pretences aſſigned for ſuch an extraordinary proceeding. It is believed, therefore, that your Lordſhips in this, as in every other caſe of the ſame kind, will hold by the admiſſion of the parties accuſed, when they acknowledge the circumſtances on which the ſtrongeſt preſumptions of guilt are founded, while at the ſame time you reject the ſhallow and palpable fictions by which they are attempted to be explained away.

There is one fact more in the cauſe, and that a moſt important one, which remains to be noticed, and which, in the reſpondent's humble apprehenſion, fills up the meaſure of proof. She alludes to the perjury of Charlotte Whiffin, the chambermaid. It is eſtabliſhed by the teſtimony of three witneſſes, that this woman repeatedly converſed with the young ladies on the practices of which the petitioners were guilty, and that ſhe declared ſhe had ſeen them herſelf engaged in theſe practices. Miſs Munro, after mentioning the ſecond occaſion when ſhe was conſcious Miſs Pirie had
State, p. 47. I. been in her bed, depones, 'That next morning ſhe told the maid 'Charlotte that ſhe was very tired, that ſhe had been diſturbed, 'and had got very little ſleep; and that Charlotte ſeemed to un-'derſtand her, and ſaid, 'It is a pity they could not get a man;' 'and that Charlotte added, 'that one day wanting ſomething for "the family, ſhe had gone to the drawing-room, but found both "doors bolted, and upon looking through the key-hole, ſhe had "ſeen them together in an improper ſituation upon the ſofa:' 'That ſhe did not mention particularly where the ſofa was ſtand-'ing, but that it uſually ſtands by the fire, and on the oppoſite 'ſide of the fire-place from the window; and that Charlotte ad-'ded, 'that ſhe had called through the door that ſhe wanted ſome-'thing,' and that they anſwered, She muſt wait a while as they 'were buſy. Depones, That Miſs Margaret Dunbar was preſent 'when this converſation took place with the maid Charlotte, and 'that ſhe is not ſure if any body elſe was preſent.'

— p. 72. A. Miſs Cumming depones, 'That when they came in from their 'walk on the ſame day, Miſs Munro and ſhe were talking of it 'in the ſchool room, and the maid Charlotte came in, and the

'witneſs

'witneſs told Miſs Munro to hold her tongue, and Charlotte ſaid, "O! you need not, it is long ſince I have known it;' that ſhe 'has ſeen them lying on the ſofa as ſhe went up ſtairs to the 'drawing-room; and another day ſhe went up to the drawing-'room, and went to both doors, but they were both locked, and 'Miſs Pirie ſaid, 'Who is there;' and Charlotte ſaid, 'It is me;' 'and Miſs Pirie ſaid, 'What do you want?' and Charlotte re-'plied, 'I want to get in:' That Miſs Pirie ſaid, 'You muſt "come back again, we are buſy juſt now;' and Charlotte ſaid ſhe 'ſaw them quite well what they were doing: That another day 'Charlotte came to the ſchool-room door, and called to the wit-'neſs and ſaid, 'They are at it juſt now:' That ſhe had been up 'in the dreſſing-room; that the bed was ſhaking, and that they 'were making ſuch a noiſe they did not hear her; and Charlotte 'went to the bed and ſaid, 'Its nine o'clock, Ma'am;' then Miſs 'Pirie came out of the bed in a great hurry, with her face quite 'red, and ſaid, 'What do you ſay Charlotte,' and went away 'to dreſs herſelf, and Miſs Woods hid herſelf with the 'clothes.'

This evidence is confirmed by the teſtimony of Miſs Stirling, a witneſs who, by the confeſſion of the petitioners themſelves, is above all exception. She does not give ſo minute an account of the converſations of Charlotte, a circumſtance by no means ſurpriſing; for as ſhe had not ſeen the miſconduct of the petitioners, it would not make ſo deep an impreſſion on her memory; and beſides, her mother had deſired her to diſcharge the whole ſubject from her mind, as appears from a letter written by that lady to the reſpondent. Still, however, ſhe remembers enough, to ſwear diſtinctly that Charlotte converſed with her upon the ſubject of theſe indecencies, and related facts which induced her to exclaim that the petitioners were beaſts. Being interrogated, 'Does ſhe 'remember any thing that Charlotte the maid ſaid about them '(the petitioners)? depones, *That ſhe ſaid once to herſelf, 'They "might as well take a man at once.*"

State, p. 154.

State, p. 108. A.

Afterwards, being 'interrogated, Did ſhe ever hear Charlotte 'make any remarks which implied that ſhe heard what paſſed in 'converſation between Miſs Cumming and Miſs Munro, relative 'to improprieties in the conduct of the purſuers? depones, She 'does not recollect; but ſhe remembers that the firſt time Miſs 'Cumming ſpoke to her on the ſubject, Charlotte the maid was 'preſent, and if ſhe did not hear all, at leaſt heard ſome of what 'paſſed upon the occaſion. Interrogated, and being referred to a 'former

——p. 111. H.

'former part of her depoſition, in which Charlotte ſaid to her-
'ſelf they might as well take a man at once, She is deſired to
'recollect what had previouſly paſſed between Charlotte and her,
'which led Charlotte to make that obſervation? depones, That
'ſhe thinks it was that morning that ſhe had heard, either from
'Charlotte or Miſs Cumming, that Charlotte had ſeen the purſuers
'in the dreſſing-room, and ſhe thinks it was that circumſtance
'which led Charlotte to make the obſervation. Interrogated
'Whether, when ſhe mentions that Charlotte uſed ſo often to
'ſpeak about the purſuers, that ſhe could not remember particular
'occaſions, Did what Charlotte ſay, uſually relate to improper or
'indecent behaviour in the purſuers to one another? depones,
'That the ſcholars were forbid to ſpeak to Charlotte, except upon
'neceſſary occaſions, and therefore the witneſs did not often
'ſpeak to her; but when Charlote ſpoke to her about the purſuers,
'*it ſometimes related to indecent behaviour, and ſometimes to their quar-*
'*rels.*'

State, p. 115. H. *Lastly*, She depones, 'That ſhe has heard Charlotte ſpeak diſre-
'ſpectfully of her miſtreſſes, and uſe ſome ſuch expreſſions as
'that they were 'pretty ladies, and that ſhe thought herſelf better
"than them;' and ſhe thought Charlotte's behaviour very improper
'per at the time, but ſhe does not recollect upon what occaſion
'this was. Depones, That when Charlotte firſt ſpoke to herſelf
'alone upon the ſubject, the witneſs was ſo horrified, that ſhe her-
'ſelf uſed ſome ſuch expreſſion as '*beasts.*'

Some months before, when the ſubject was freſher in this young lady's mind, ſhe gives a more minute account of it, in the letter already quoted, of which production was forced by the petitioners. She there ſays, '*The maid you recollect told us, that ſhe had*
'*caught them one morning in bed together in the dressing-room, and that*
'*Miss Pirie jumped out of bed with her face as red as scarlet.*

—— P. 154. E.

Charlotte Whiffin, a girl of nineteen, who came from the ſouth of England to this country, nobody knows in what manner or for what purpoſe, who has no relations or connections here and who retreated to England immediately after her examination was chambermaid at the boarding-ſchool. After the ſchool broke up in November, ſhe was continued in the ſervice of the petitioners till the month of March, when ſhe was adduced as a witneſs. When ſhe was examined, ſhe flatly contradicted theſe three young ladies; declaring, that ſhe had never heard nor ſaid, nor had it ever entered into her mind, to conceive any thing to the prejudice

of her miſtreſſes. ‘ Being interrogated, Whether at any time ‘ ſhe obſerved any thing in the conduct of the purſuers towards ‘ each other that appeared to her extraordinary or indecent, ‘ or that led the witneſs to be ſurpriſed at what ſhe ſaw? de- ‘ pones, That ſhe did not. Interrogated, Whether ſhe ever ſaw ‘ Miſs Woods and Miſs Pirie kiſs each other, or ſhew any un- ‘ common marks of affection for each other? depones, She does ‘ not recollect that ever ſhe ſaw any ſuch thing. Interrogated, ‘ If ſhe ever ſaw Miſs Woods and Miſs Pirie lying together on a ‘ ſofa or ſettee in the drawing-room? depones, That ſhe never did. ‘ Interrogated, If ſhe ever ſaw them lying together in the bed in ‘ the dreſſing-room? depones, That ſhe did not. Interrogated, If, ‘ upon any occaſion ſhe went to the drawing-room in order ‘ to ſpeak to Miſs Pirie or Miſs Woods, and found the drawing- ‘ room door locked or bolted when Miſs Pirie and Miſs Woods ‘ were in the drawing-room together? depones, She does not re- ‘ collect ever going to the room and finding the doors bolted. ‘ Interrogated, If ſhe ever obſerved any quarrelling, diſpute or ‘ high words between the purſuers? depones, She has ſeen them ‘ diſpute between themſelves. Interrogated, If at any time ſhe ‘ heard Miſs Munro, Miſs Cumming, and Miſs Stirling, or any of ‘ them, converſe or ſay any thing with regard to what Miſs Cum- ‘ ming or Miſs Munro had taken notice of in the conduct of the ‘ purſuers towards each other in their reſpective beds in the night- ‘ time or early in the morning and did ſhe then take any part in ‘ the converſation, or did ſhe relate any thing to them of what ſhe ‘ had ſeen or knew? depones, She has ſeen theſe three ladies to- ‘ gether, and converſing together, but does not know what it was ‘ concerning, and ſhe never told them that ſhe had ſeen or obſer- ‘ ved any thing improper in the purſuers' conduct. Interrogated, ‘ Did ſhe ever tell to any of the other ſcholars, or to any other, ‘ that ſhe had obſerved any thing improper in the purſuers' con- ‘ duct? depones, That ſhe did not.’ State, p. 103. C.

Afterwards, being interrogated, ‘ At the time the ſcholars were ‘ taken away did ſhe know what the cauſe was? depones, That ‘ ſhe did not, and that ſhe heard no ſurmiſe of it, but rather ‘ thought, when they were taken away ſo many of them together, ‘ that they were going to ſome ball or entertainment.’ —— p. 105. D

At the end of her depoſition, being interrogated, ‘ Did the wit- ‘ neſs ever expreſs to any of thoſe young ladies any diſſatisfaction ‘ at her miſtreſſes, and uſe any ſuch expreſſion, or that ſhe was a ‘ better lady than them? depones, O! not at all.’ —— p. 107. B.

It is unneceſſary to deſire your Lordſhips to weigh the evidence of Charlotte Whiſhin againſt that of Miſs Cumming, Miſs Munro,

and Miſs Stirling: her credit is much too contemptible even to be mentioned as in competition with theirs. Accordingly, not one of your Lordſhips' number heſitated in pronouncing her to be directly and wilfully perjured. But that perjury betrays her conſciouſneſs of the petitioners' guilt; for no one ever forſwore himſelf without a motive. She meant to ſcreen her miſtreſſes, and ſhe muſt have been induced to do ſo, either by ſubornation, or favour; and it matters not which. There is but one conceivable hypotheſis by which her perjury can be accounted for, and that hypotheſis is utterly excluſive of the petitioners' innocence.

The reſpondent muſt confeſs her aſtoniſhment at an attempt made in the petition, to vindicate Charlotte Whiſſin from the charge of perjury. It is ſaid ſhe was a lively young woman, who might have criticiſed the conduct of her miſtreſſes, and if ſhe had told the girls what was falſe, it was proper ſhe ſhould retract it when on oath. Suppoſe all this were to be granted, the queſtion remains, Why did ſhe aſſert on oath that ſhe never ſo criticiſed her miſtreſſes? She depones, that ſhe never told any of the ſcholars that ſhe had obſerved any thing improper in the conduct of her miſtreſſes, or expreſſed any diſſatisfaction with them.—'*O! not at all.*'—Let this be reconciled with the evidence of Miſs Cumming, Miſs Munro, or even Miſs Stirling. The reſpondent muſt be allowed to ſay, that ſuch an attempt is not very reſpectful to the underſtanding of the Court.

The evidence, direct and circumſtantial, which has been laid before your Lordſhips, appears complete. It is ſuch as is ſeldom obtained in caſes of ſecret offences like the preſent, where for the moſt part preſumptions alone, and thoſe often indirect and remote, require to be concatenated, in order to eſtabliſh the fact. But what ſpecies of evidence, fitted to operate on the mind, or to command belief is awanting here; or how ſhall a crime ever be eſtabliſhed for the future, if ſuch proof is to be diſregarded? Two witneſſes, of a reputation hitherto irreproachable, whoſe *ſtatus*, education, connections and proſpects, ſet them above all the ordinary grounds of ſuſpicion, with every preſumption in their favour, ariſing from the ſimplicity and candour of youth, and with no imaginable motive to invent a calumny ſo extraordinary, as well as atrocious, or to perjure themſelves in its ſupport, have ſworn in direct and poſitive terms to the miſconduct of the petitioners, as coming within their own obſervation and knowledge. If you believe both or either of them, the cauſe is at an end. Fully aware of this, the petitioners have attacked them and their evidence, with the uſual arts which every offender, in danger of conviction, is ſure to employ, by vilifying their underſtandings, aſperſing their characters,

ters, and cavilling upon the minute inaccuracies, of which their depoſitions, like all human teſtimony, afford examples.

Theſe objections will now be ſhortly and generally conſidered; for the reſpondent truſts, it would be equally tedious and idle to follow the petitioners through every ſtep of their detail.

Feeling that Miſs Munro's integrity is placed far beyond the reach of ſuſpicion, the petitioners take advantage of ſome peculiarities in the ſituation of Miſs Cumming, to excite a prejudice againſt her. As ſhe was born in India, and as her mother was a woman of colour, they would have your Lordſhips, on that ground alone, to ſet her down as unworthy of credit. Though ſhe arrived in Britain at the age of eight years, and conſequently muſt have ſailed from Bengal ſoon after ſhe was ſeven, they take it for granted, that her mind muſt have been polluted in her native country, by the licentiouſneſs of manners ſaid to be prevalent there. At the ſame time, they expreſsly diſclaim the belief of any practice exiſting in India, ſimilar to that which is laid to their charge; and it is but conſiſtent that they ſhould do ſo, ſince they have denied its phyſical poſſibility.

The reſpondent believes, that little comment is necessary upon this objection. The wildest theorists on the subject of oriental precocity, have not thought of extending it to children of seven years and a half, especially to children born of an European parent. But supposing Miss Cumming's sexual feelings to have been of earlier growth, does it follow, that her mind must be polluted? From before the age of six, she was placed at the most respectable boarding-schools at Calcutta; and will your Lordships presume that the mistresses of those schools were so unworthy of their charge, and ignorant of their interest, as to suffer their pupils to have intercourse with women of licentious and abandoned character? But you are required to presume this, not only without proof, but in direct contradiction to proof. Miss Cumming

'being interrogated by the Lord Justice-Clerk, Whether, while she State, p. 77. F.
'was in India at school, or otherwise, she ever heard or observed
'among the children or others, any such practices as she has de-
'scribed took place between the pursuers? depones, *Never*. And
'interrogated, If she ever heard any conversation about such
'things? depones, *Never*. Interrogated by Lord Meadowbank,
'Was the language which the women at school held to each
'other and to the witness always perfectly correct? depones, *She*
'*recollects nothing to the contrary*. Interrogated for the pursuers,
'Did she never hear any language in India, that upon recollec-
'tion, she now thinks was improper? depones, *She did not*.'

Your Lordships will judge, whether most regard is due to a witness

witness denying upon oath that she ever so much as heard improper language while she remained in India, or to the hypothesis of the petitioners, that since the lower class of women in the east are reputed to be more licentious than Europeans, an individual child born of an European parent, and educated as she has been, must be held, by a presumption of law, to be unprincipled and impure, and that every averment she makes is the invention of a polluted imagination, actuated by malice equally unaccountable and diabolical.

But it is said, that if Dr Hare had been examined, he might have thrown light on the state of the boarding-schools at Calcutta, and perhaps might have been able to communicate some information with regard to the particular seminary at which Miss Cumming was boarded. Your Lordships will not fail to recollect, that the petitioners proposed to adduce Dr Hare merely as to the general fact, that the lower casts among the Hindoos are licentious, a fact not nearly so relevant as if the respondent, in order to impeach the character of Miss Woods, were to offer evidence with regard to the manners of players, and people connected with the theatre, among whom she was brought up. It was not so much as hinted, that Dr Hare knew any thing of the boarding mistresses who had the care of Miss Cumming; and are prejudices to be excited, not by evidence, not by averments, but by conjectures what a witness, if he were examined, might possibly say? The respondent can tell your Lordships, that the lawful daughters of the most distinguished British subjects in India, have been placed at those boarding-schools, at a more advanced age than Miss Cumming was when she left them; and you will hesitate before you fix a stigma upon women of the most respectable character in this country, by declaring the seminaries where they were educated, to be so profligate and debauched, as to pollute the imagination, and ruin the morals of every girl who enters them.

The petitioners have travelled out of the proof, to substitute the conjectured opinions of Dr Hare for evidence of a fact, which, if established, would be irrelevant. But this is not the only irregularity which they have committed. In defiance of all regard to the forms of this Court, and the decorum of judicial procedure, you are told, on the authority of the petitioners, that a company of gentlemen who had lived in India, agreed, when they heard the story, that it must have been the invention of Miss Cumming. The judgment of this Court, on advising a concluded cause, is to be affected, it seems, by the speculations, or pretended speculations of gentlemen over their bottle, on the false and prejudiced statement which

which they have picked up from public report, or more probably from the misrepresentations of parties interested in the question. The respondent knows, that calumnies against her innocent grandaughter were circulated with the most malignant industry, from the moment the case came into Court; and the *ex parte* opinion of those Indian gentlemen, so indecently obtruded upon the Court, exhibits manifest traces of their existence.

But an objection against Miss Cumming, which presupposes that the whole population of India must be discredited, and even children who left it before they attained eight years of age, need not be made the subject of much discussion. Yet this is not the wildest attempt which has been hazarded to invalidate her testimony. The petitioners were sensible, that before any court of justice, or any rational being, could believe that a girl of sixteen years of age would hatch a conspiracy to ruin the fame and fortune of two innocent individuals, and in prosecution of that conspiracy, could deliberately perjure herself throughout an examination of four days continuance, some probable motive must be assigned for such an excess of malice and profligacy. This was a difficult task; and your Lordships will observe how they have succeeded. In their condescendence, they have described the whole economy of their school, which seems to have been conducted with great regularity and propriety; and it appears from the proof, that the boarders were satisfied with it in every respect. They lived on a footing of the greatest intimacy with the petitioners, who endeavoured, and it appears successfully, to gain their confidence and affection. There was no personal chastisement,—no confinement,—nothing which could provoke resentment in the most irritable mind. If faults were committed, the penalty was generally an increase of the ordinary task, or the imposition of an additional exercise. If these exercises were not learnt in time, the offender, as is usual at English schools, and even universities, was excluded from a place at table; and this was called being in disgrace. A ticket, called the noise-card, was passed to any young lady speaking in lesson-time, or otherwise making a disturbance, who kept it until one of her companions committed a similar fault; while other offences against boarding-school etiquette were punished by a decorum-card of the same description. On the slender foundation that Miss Cumming, in common with all the other young ladies at the school, had exposed herself to those penalties, it is assumed that she was dissatisfied with the school, and that she had planned this intrigue to get quit of it. 'As there is no doubt, therefore, that Pet. p. 53.
'she was dissatisfied with the school; that there were causes which
'may easily be supposed to have produced such a dislike; that

' ſhe was tired of the diſcipline, and pretended to be unable to ' execute her taſks, it is certainly not difficult to ſee a motive ' for raiſing an intrigue to the prejudice of her miſtreſſes. It was ' juſt the common object of getting rid of the reſtraint of the ' ſchool, ſtimulated by a little reſentment for the puniſhments and ' affronts which her own conduct had brought upon her.' The aſſumption, that Miſs Cumming was diſſatisfied with the ſchool, like many others, with which, as will appear in the ſequel, every page of the petition is filled, is in direct contradiction to the evidence. The petitioners themſelves ſtated, in the anſwers to the condeſcendence, a circumſtance which they ſeem to have forgot-

State, p. 31. D. ten, ' that they will have no difficulty to ſhew, that both Miſs ' Munro and Miſs Cumming, during the whole time, profeſſed ' not only ordinary reſpect, but very ſtrong gratitude and affection ' towards the purſuers.'

Miſs Cumming, after deponing that the diſcipline of the ſchool at Drumſheugh was more ſtrict than that of the ſchool at Elgin,

—— p. 78. H. being ' interrogated, Did you feel the diſcipline of the ſchool at ' Drumſheugh haraſſing or diſagreeable, compared with that of the ' Elgin ſchool? depones, That ſhe thought it much more ſtrict, ' but not diſagreeably ſo.' That this diſcipline never exceeded the penalties already deſcribed, had not the leaſt effect in alienating or leſſening her attachment to her ſchoolmiſtreſſes, is diſtinct-

—— p. 94. B. ly proved. ' Interrogated, Did you behave with reſpect to Miſs ' Woods as long as you continued at the ſchool? depones, She ' did, as far as ſhe knows. Interrogated, Did ſhe behave with ' kindneſs and affection to Miſs Woods as long as ſhe continued ' at the ſchool? depones, *She was very fond of her.* Interrogated, Was ſhe very fond of her to the laſt? depones, *She was always fond of her, unleſs when ſhe thought of that.* Interrogated, ' When ſhe left the ſchool for the laſt time, did ſhe take Miſs ' Woods by the hand and kiſs her? depones, *She did.*'

' Interrogated, Was you anxious to be next Miſs Woods in ' walking? depones, *Yes*, when ſhe had not her couſins to walk ' with. Interrogated by Lord Robertſon, Was it conſidered as a ' mark of honour among the ſcholars to be next the miſtreſs ' in walking? depones, *No; ſhe asked it out of affection for Miſs ' Woods.* Interrogated, Was ſhe anxious to be next Miſs Woods ' in walking, even when her couſins were out walking at the ſame ' time? depones, She does not remember; but ſhe does not think ' ſo. Interrogated, Did ſhe ever beſpeak Miſs Woods' arm in ' walking a day beforehand? depones, That ſhe has ſome faint re- ' collection of having done ſo. Interrogated, Did Miſs Woods ' complain of the officious attentions of the witneſs at any time

' or

'or times recently before the witneſs left the ſchool? depones, 'She does not remember when ſhe did it, but ſhe knows ſhe has 'done it. Interrogated, Did the witneſs continue anxious to be 'next Miſs Woods in walking, down to the time ſhe left the 'ſchool? depones, *Yes, except when her cousins were with her.*'

Miſs Cumming afterwards mentions, that Miſs Woods kindly aſſiſted her to make card-boxes as a preſent for her grandmother; and Miſs Munro proves the familiar terms on which the young ladies were with the petitioners, leaning on their arms when they went to walk, and giving them a ſhare of the fruit which they purchaſed. Indeed it appears that Miſs Munro's feelings were entirely in uniſon with thoſe of Miſs Cumming, being perfectly ſenſible that the diſcipline of the ſchool was for her good. After mentioning the improprieties which ſhe witneſſed, ſhe depones, 'That in every other reſpect, excepting as above deponed 'to, the witneſs was perfectly ſatisfied with her treatment at the 'ſchool, and the inſtructions and example ſhe received there.' And it appears, that ſhe expreſſed her gratitude to Miſs Pirie in the warmeſt and moſt natural terms. 'And being interrogated, State, p. 59. E.
'Whether ſhe remembers the diſgrace-table, and that Miſs Pirie 'made many remarks to her on the ſubject, and that ſhe replied, 'that ſhe dared ſay it was all for her own good? depones, That 'ſhe does remember ſaying ſo, but does not recollect when, nor 'does ſhe remember Miſs Pirie making many remarks on the ſub-'ject. Being interrogated, Whether ſhe ever remembers ſaying 'to Miſs Pirie, *that ſhe dared say ſhe would bleſs the day ſhe came to 'Drumsheugh?* depones, *That ſhe remembers ſo ſaying* one day when 'they were out upon their walk, but does not remember upon 'what occaſion, or whether it was before or after Miſs Pirie com-'ing to Miſs Woods' bed. Depones, That upon this occaſion 'ſhe had hold of Miſs Pirie's arm.'

So far, then, from the fact being undoubted that Miſs Cumming was diſſatisfied with the ſchool, the reverſe is diſtinctly proved. She was ſenſible of the advantages of her ſituaion, ſhe did not find the diſcipline irkſome or diſagreeable, and, in common with Miſs Munro and all the other grown girls, ſhe lived in habits of intimacy and confidence with the petitioners. It has been ſhewn, in particular, that ſhe was warmly attached to Miſs Woods,—an attachment which nothing ſhe witneſſed has been able to eradicate. The petitioners have alluded to a journal kept by Miſs Cumming of the faults which ſhe committed, and cenſures which ſhe incurred, during the laſt three months of her ſtay at Drumſheugh, in which

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are recorded various tasks impoſed, for leaving her gloves in the ſchool-room, ſaying her French catechiſm inaccurately, and other offences of a ſimilar deſcription. This journal, with Miſs Woods's commentaries upon it, which are occaſionally ſubjoined, ſhews with what perfect good humour the whole ſyſtem of education and diſcipline was conducted. In the reſpondent's apprehenſion, it exhibits a moſt engaging picture of the perfect innocence of Miſs Cumming, and the playful and eaſy temper of Miſs Woods. Is it credible, that a girl, malicious and abandoned beyond example, ſhould for months together have committed no fault, and betrayed no ſentiment, for which the taſk of learning a few lines of poetry by heart, was not conſidered as an adequate puniſhment? Is it credible, that this girl ſhould have fabricated a horrible falſehood to ruin one who treated her more as a companion than a pupil, on whoſe arm ſhe daily leant, who ſhared all her amuſements, and by whom the exerciſes, and even the diſcipline of the ſchool, were made to wear the ſemblance of play?

Your Lordſhips are told, that Miſs Pirie having occaſion to reprove Miſs Cumming on account of bad conduct to Miſs Cunyngham, uſed the expreſſion, that ſhe had 'no heart,' or 'a bad 'heart, and that Miſs Cumming would not admit this; but it was 'afterwards proved by Miſs Stirling.' Look at the proof, and ſee how this fact, immaterial as it is, has been miſrepreſented by the petitioners. Miſs Cumming admits, that Miſs Pirie once found fault with her feelings, or heart, but ſhe does not *remember* that this was in the preſence of the girls. And all that Miſs Stirling
State, p. 114. ſwears is, 'That ſhe does *think* ſhe recollects Miſs Pirie having 'uſed words to that effect, at leaſt to the effect of ſaying ſhe had 'no heart, but does not recollect her ſaying ſhe had a bad heart. '*and her recollection on the ſubject is not very deciſive at all.*' Miſs Cumming's admiſſion goes to the full extent of what the petitioners were endeavouring to prove, and yet they charge her with a wilful ſuppreſſion of the truth; and they repreſent her as contradicted by Miſs Stirling, who has no deciſive recollection on the ſubject. This is one inſtance of a thouſand in which the evidence is perverted, even where there is no important purpoſe to ſerve by it. What girl is there in exiſtence who has not been told that ſhe had no heart, when, in the thoughtleſſneſs of youth, ſhe had unintentionally wounded the feelings of a companion. In this very caſe, there is an entry in Miſs Cumming's journal at the time, from which it appears, that the fault which drew down the cen-

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ſure of her miſtreſſes was, the paſſing of the decorum card to Miſs Cunynghaine as a joke.

Such are the pretences on which your Lordſhips are required to believe, that two young ladies of ſixteen, had conceived deadly malice againſt the petitioners. If there had been no proof on the ſubject, the motive aſſigned would have been palpably inadequate to account for ſuch unheard of wickedneſs. But thoſe pretences, flimſy and abſurd as they are, have been entirely negatived by the evidence; and if Miſs Cumming was the author of a conſpiracy againſt her ſchool-miſtreſſes, and has perjured herſelf to give it effect, it was the moſt unaccountable, the moſt wanton, the moſt ungrateful conſpiracy of which the world ever afforded an example. The objects of it were thoſe who had always behaved to her with kindneſs, and for whom ſhe uniformly profeſſed to feel, and depones that ſhe did feel, ſincere affection. Nor is this all; ſhe ſelected for the accomplice of her guilt, one who was no leſs attached to the petitioners, and no leſs impreſſed with gratitude for their kindneſs. Will your Lordſhips believe, that Miſs Munro, 'who bleſſed the day on which ſhe went to 'Drumſheugh,' would, at the firſt propoſal, have lent herſelf as the willing inſtrument of deſtruction to her benefactors? Another circumſtance may be mentioned, as neceſſarily excluſive of the hypotheſis, that Miſs Cumming deviſed a plot againſt the petitioners, for the purpoſe of being removed from ſchool. It is proved, not only by her own evidence, but that of Miſs Munro, whom the petitioners themſelves dare not accuſe of wilful perjury, that a plan was laid to let the petitioners know they were ſuſpected; and accordingly Miſs Cumming complained in preſence of Miſs Pirie, that ſhe had been diſturbed during the night; on which Miſs Pirie's face turned red, and ſhe went out of the room. If Miſs Cumming's object was to be taken from ſchool, ſhe would not have had the conſummate folly to put the petitioners on their guard, that ſhe was diſſatisfied with their conduct, or to enable them to account for the circumſtances on which the charge ſhe intended to bring againſt them was to be reſted.

If Miſs Cumming is the monſter of wickedneſs which ſhe is now repreſented, her birth and country, and education, are as inadequate to account for the exiſtence of ſuch diſpoſitions, as her ſituation at Drumſheugh for their being called into action. But her credibility is attacked on other grounds. It is ſaid, that ſhe is the natural grandaughter of the reſpondent, and muſt therefore be prejudiced in her favour. Your Lordſhips have admitted her *cum nota*; and in ſo far as relationſhip may create a bias in a pure and upright mind, let allowance be made for that bias in appreciating

her teſtimony. But you will give it no further effect. The wiſeſt and beſt muſt be admitted as witneſs in a relation's cauſe, under the ſame qualification; but no diſcredit attaches to them on that acconnt. Was it ever ſuppoſed, where the evidence of a ſon or brother is received *ob penuriam testium*, that deliberate reſolution to commit perjury may be preſumed. If ſuch a preſumption could exiſt, it would be moſt criminal to admit him as a witneſs. The preſumption goes no farther, than that there may be an inſenſible wiſh to repreſent facts in the moſt favourable light; and therefore, near relations in this country, though not in England, are rejected, when witneſſes liable to no ſuch partiality can be obtained.

In the preſent caſe, Miſs Cumming has given a clear and unambiguous account of a ſeries of indecencies, in which there is no room for the operation of bias and partiality. Her account muſt be either true in ſubſtance, or falſe in ſubſtance. If it be true in ſubſtance, no colour which ſhe may have inſenſibly added, can materially aggravate the guilt of the petitioners. If it be falſe in ſubſtance, the ties of relationſhip and dependence can never account for ſo horrible and nefarious a perjury. The mark which you have affixed to her name, and which you would affix to that of every witneſs ſo circumſtanced, is as nothing in the ſcale, when you conſider the evidence which ſhe has actually given.

But the petitioners have ſaid, that Miſs Cumming is the acknowledged author of the calumny; and unleſs it is proved that ſhe muſt forfeit the good opinion of her grandmother, and be ruined in her perſonal character and ſtate, from which they infer that ſhe is not to be credited, having ſo 'dreadful an intereſt' in the iſſue.

As to Miſs Cumming being the acknowledged author of the calumny, it is a total miſtake. Miſs Munro had communicated what ſhe herſelf had witneſſed to Mary Brown, ſeveral weeks preceding Miſs Cumming's diſcloſure, and ſhe repeated the ſtory to her relations before one circumſtance of what Miſs Cumming reported had paſſed the threſhold of the reſpondent's family. At the very ſame time, Miſs Stirling acquainted her friends of the fact, not ſpeaking upon the authority of Miſs Cumming and Miſs Munro alone, but on that of Charlotte Whiffin beſides, who declared that ſhe had ſeen the licentious intercourſe of the petitioners in the face of day.

But obſerve the concluſion to which this ludicrous fallacy of the petitioners would lead. Admitting that Miſs Cumming was the firſt perſon who gave information of their guilt, that is no reaſon

to

to infer that the ſame information, when repeated upon oath, muſt be falſe. If it were ſo, no one could with ſafety reveal the crimes committed in his preſence. According to the argument of the petitioners, if they were not afterwards proved, he muſt be ſet down for a calumniator, and a deſire to preſerve his character is an intereſt in the cauſe which ought to diſqualify him from being a witneſs. A ſchoolmaſter, for example, commits ſodomy in preſence of two of his pupils, who give intelligence to their parents, and the offender is indicted. On his trial, the boys are adduced as evidence, but the jury muſt give them no credit; for, if he ſhould be acquitted, they paſs for corrupted and malicious ſlanderers, forfeit the good opinion of their relations, and endanger all their proſpects in life. 'They have the moſt dreadful intereſt 'that a witneſs can have in a cauſe.' But if that intereſt vitiates their evidence, the crime ſuppoſed, and every crime of the kind, may be committed with perfect impunity. The fallacy evidently lies in aſſuming that the original information is falſe; and unleſs that aſſumption is proved, the witneſs has no intereſt but to ſpeak the truth. If it be proved, the argument is inept; for if the original information is a lie, a repetition of it muſt be a lie, whether there be an intereſt to repeat it or not. The queſtion is, whether Miſs Cumming had any intereſt in fabricating the ſtory at firſt, and telling it to the reſpondent. If ſhe knew the importance of character, the value of her grandmother's good opinion, or the conſequences of an injurious and unfounded calumny againſt the petitioners, theſe motives muſt have operated with her from the beginning. She never could have been ſo groſsly ſtupid as to ſuppoſe that the ſtory would be concealed from the petitioners, or that her falſehood would, in the long run, eſcape detection. The inducements to perjure herſelf in giving evidence, which the petitioners pretend to diſcover, muſt have operated long before in making her ſpeak truth; in conjunction with every other inducement which can be ſuppoſed to influence the heart of a candid and ingenuous young woman. And if ſhe adhered to her original ſtory, in every particular when put upon oath, the fair and legitimate inference is, that ſhe has ſpoken truth from the firſt, not that to unprovoked and malicious falſehood ſhe added deliberate perjury.

The reſpondent will ſay no more upon the general objections to Miſs Cumming's credibility. That ſhe was born in Hindoſtan; that ſhe is the natural grandaughter of the reſpondent; and if ſhe fabricated the ſtory at firſt, that ſhe had an intereſt to ſupport it,

are topics of declamation ſo inconcluſive, as ſcarcely to deſerve an anſwer. But there is another blow levelled at her evidence of a more dextrous nature, which, if unnoticed, might have weight with thoſe of your Lordſhips' number who were not preſent when ſhe was examined. It is ſaid, that the manner in which ſhe gave her teſtimony was ſuſpicious. That ſhe repeated all the groſs details with minuteneſs and facility, but when the plaineſt queſtions were aſked in her croſs-examination, that ſhe ſometimes preſerved ſilence for ten minutes at a time. Nor is this all. You are told, that in the opinion of the preſiding Judge, ſhe had prevaricated ſo evidently, as to have warranted him, in the ſtrict diſcharge of his duty, to commit her to jail. Upon this ſtatement, the reſpondent would obſerve, that Miſs Cumming, during her examination in chief, anſwered with comparative readineſs the interrogatories which were put to her; and the reaſon is perfectly obvious, for they all related to the particulars which ſhe herſelf had communicated, and which ſhe had occaſion frequently to repeat during the inveſtigation which took place in the earlier part of the cauſe. All theſe facts had forcibly ſtruck her attention when they occurred, and had been frequently recalled to her recollection afterwards.

But the examination on the part of the petitioners was of a very different deſcription. They had been allowed to prove all the facts ſtated in their pleadings; and your Lordſhips will not fail to remark how wide a circuit they have taken in their proof, and what an enormous maſs of multifarious matter it contains. Accordingly, Miſs Cumming was examined, and croſs-examined, for nearly ſix hours at a time, during four ſucceſſive days, upon an infinite variety of topics ſuddenly ſtarted upon her, and as quickly withdrawn, the ſubject of inquiry being perpetually ſhifted and reſtored with the moſt induſtrious perplexity. Sometimes ſhe was called upon to diſtinguiſh the ſeveral nocturnal interviews, all of which had happened *five or ſix months before the date of her examination*, and to ſpecify the moſt minute and immaterial circumſtances occurring at each of them reſpectively. While her ideas were in that train, and before ſhe could collect them, all at once ſhe was interrogated about India, and the events of her infancy, or the occurrences at the boarding-ſchool at Elgin; then ſhe was deſired to recollect converſations with Charlotte Whiffin, Miſs Munro, and Miſs Stirling, during a period of ſeveral months,—then brought back to the ſcenes in her bed-chamber, —then hurried to Portobello,—then compelled to enter into the whole

whole details of economy at Drumſheugh, and when ſhe was trying to repeat the words ſpoken on ſome trivial occaſion, about the decorum-card or the diſgrace-table, ſhe was again deſired to deſcribe a particular poſture, or motion, or to repeat an expreſſion of the petitioners on ſome occaſion of their intercourſe. Nor was it alone by perpetually varying the ſubject of examination that ſhe was perplexed and embarraſſed. Queſtions were frequently put of ſuch a nature as to require a minute recollection, and analyſis of a proceſs of thought, the reſults of which were excluſively of importance, and therefore excluſively retained in the mind; and in attempting to anſwer ſuch queſtions, ſhe exhauſted herſelf in ineffectual efforts to recall ideas which had left no trace in her memory. A ſtriking example of this extraordinary ſpecies of analytical expiſcation will be found in the 88th and 89th pages of the State, where ſhe is required to repeat, in ſucceſſion, the whole ſeries of perceptions and inferences by which ſhe arrived at the concluſion that Miſs Woods was lying above Miſs Pirie, and that they drew up their ſhifts, although at the period referred to, ſhe was placed in contact with them in the ſame bed. But this paſſage will be the ſubject of conſideration afterwards. At preſent, it is enough to ſay, that although there may have been great ability and matchleſs perſeverance in the mode in which the petitioners' proof was conducted, yet it will not fail to ſuggeſt other reflections to the mind of your Lordſhips. It will be remembered, that this witneſs was a girl of ſixteen,—that ſhe was, for the firſt time, examined on oath, and before a court of law—that the ſubject of inquiry was of the moſt painful and agitating kind,—that although unpractiſed to command her attention, it was kept each day for nearly ſix hours upon the ſtretch,—that the courſe of her ideas was induſtriouſly interrupted, and a rapid ſucceſſion of diverſified and unconnected objects preſented to her imagination,—that her memory was taxed with the moſt minute and hurried incidents and expreſſions,—and that ſhe was often required to recall and deſcribe the moſt fleeting and evaneſcent proceſſes of thought. It would have been ſtrange indeed, if, under the fatigue and diſtreſs of this unexampled ordeal, her ſtrength ſhould not occaſionally have been worn out, her ſpirits have failed, and her recollection for a time have deſerted her. They whoſe minds have been longeſt habituated to intellectual labour, in their cooleſt and moſt indifferent hours, often experience a temporary wandering of thought, and loſe the controul of their faculties; and ſhall

a girl of ſixteen, agitated, haraſſed and exhauſted, be branded as a prevaricator or perjurer, becauſe ſome minutes elapſed before ſhe could recollect her thoughts, or call up ſufficient energy to anſwer an unexpected queſtion? It is wonderful that ſhe did not fall into abſolute incoherence, or was not overpowered with an hyſterical acceſs; and is her integrity to be impeached, and her evidence diſcredited, on the ground of an occaſional pauſe?

But the opinion of the Preſiding Judge is referred to as deciſive that the witneſs had exhibited ſymptoms of prevarication. The petitioners, with little delicacy, have compelled the reſpondent to mention a circumſtance which would otherwiſe have been paſſed over in ſilence; and for the accuracy of her ſtatement, ſhe appeals to the recollection of every Judge who was preſent. After this witneſs had mentioned the circumſtances which had occurred at one of the congreſſes, and in particular, that Miſs Woods was lying above Miſs Pirie, ſhe was interrogated, 'How ſhe was 'certain on other occaſions that Miſs Woods was lying upper-'moſt? depones, That ſhe was not certain, and does not think 'that ſhe has ſaid ſo.' The Preſiding Judge, from a very natural miſrecollection, imagined that ſhe had contradicted herſelf; but on referring back to her evidence on the preceding day, where the contradiction was ſuppoſed to exiſt, it was found, that the witneſs was perfectly correct, and that the Court was in a miſtake. The queſtion which had been previouſly put to her was, 'How Miſs Woods and Miſs Pirie were 'lying on theſe occaſions?' To this ſhe anſwered, 'One of them 'was lying above the other.' Accordingly, the Honourable Judge alluded to, with his uſual candour, did not fail to acknowledge that the witneſs had been unjuſtly cenſured. If the attention of a powerful mind, inured to continued exertion, flagged for an inſtant in the courſe of this tedious proof, is it fair to conclude, from inaccuracies, or even contradictions of minor importance, (if any contradictions had occurred), that a depoſition which took four days to deliver, is, from beginning to end, a ſyſtem of deliberate perjury! That it may contain ſome errors with regard to dates and times, ſome confuſion of ideas, ſome tranſpoſition of circumſtances from one event to another, the reſpondent will not diſpute; but when the petitioners aſſert, that it is full of direct concealment, of affected want of recollection, of violent exaggeration, and of inconſiſtencies and contradictions without number, ſhe joins iſſue with her antagoniſts upon the fact. She maintains, that the

State, p. 83. H.

— p. 70. F.

evidence

evidence of Miſs Cumming has been mutilated, diſtorted and exaggerated by them, and that it is only by ſuch miſrepreſentations that it could be made for an inſtant to aſſume a doubtful or ſuſpicious appearance. She hopes to ſhew in the ſequel, that it poſſeſſes the intrinſic and ſubſtantial conſiſtency, which is the ſureſt teſt of truth, without thoſe minute and ſtudied adaptations and coincidences ſo eaſily and frequently counterfeited by falſehood. And if any opinion to the contrary was ever delivered, ſhe truſts that, on reconſideration, it will be retracted.

But enough has been ſaid on the character of Miſs Cumming, and the manner in which ſhe delivered her teſtimony. Frivolous as the charges muſt appear which have been brought againſt her on thoſe grounds, they yield, if poſſible, in abſurdity to the attack which has been made on the credibility of Miſs Munro. This young lady is a native of Britain; her complexion diſcloſes no Aſiatic tinge, and ſhe never breathed, even in infancy, the polluted air of Hindoſtan. She was educated by a virtuous and reſpectable mother; ſhe is not related to the reſpondent, and can gain or loſe nothing by the event of the action. Not being expoſed to ſo long and ſo ſevere an examination as Miſs Cumming, her mode of giving evidence, while it was equally compoſed and diſtinct with that of her friend, exhibited a greater degree of talent and readineſs. It will not be forgotten, that when her depoſition was cloſed, ſhe obtained the commendation of the Court, in expreſs and pointed terms. Yet Miſs Munro's teſtimony is as unequivocal, as completely deciſive as that of Miſs Cumming; and although the latter were to be obliterated from the record, the former, in conjunction with the circumſtantial evidence of the caſe, is amply ſufficient to bring home the preſent charge.

Againſt Miſs Munro's veracity the petitioners dare not inſinuate a ſuſpicion. But obſerve the feeble effort by which they would oppoſe the reſiſtleſs force of her evidence. It is plain from the whole tenor of her ſtory, that ſhe firſt communicated with Miſs Cumming on the impropriety of the petitioners' conduct, after ſhe was conſcious that Miſs Pirie had been in the bed with Miſs Woods, and had obſerved all that paſſed on the occaſion. But the petitioners, by miſconſtruing a paſſage, to be afterwards noticed, deduce the erroneous inference, that ſhe had received all information from the latter, before ſhe herſelf had remarked any impropriety. On this ground, they maintain, that Miſs

Miſs Munro muſt have been ſo prepoſſeſſed with the idea of their guilt,—that her mind muſt have been ſo corrupted and poiſoned, that no credit can be given her, even when ſhe relates what ſhe felt, and heard, and ſaw. This is a ſhort and eaſy way to deal with troubleſome evidence; and if ſuch a rule be received in criminal practice, it will be of very extenſive application, Does it follow, becauſe a perſon is forewarned of a probable event, that he muſt be diſqualified to obſerve it when it comes to paſs. Becauſe Miſs Munro was told, that Miſs Woods came to the bed of Miſs Pirie, and that certain practices took place between them, will you hold, that whatever ſhe ſwears *bona fide* to have witneſſed herſelf, muſt be the pure offspring of imagination? She is neither a changeling nor a lunatic, as thoſe of your Lordſhips know well who attended her examination, and as the record of the Court ſufficiently evinces. Now, this witneſs has given a detail the ſame in ſubſtance with that of Miſs Cumming, becauſe a ſimilar operation was repeated; while all the concomitant circumſtances are varied, and ſome of them in a remarkable manner. She depones that the bed ſhook; that the bed-clothes were toſſed about; that the parties breathed high; that the bodies of both were in motion. During the ſpace of half an hour on the firſt occaſion, and more than half an hour on the ſecond, ſhe lay awake and obſerved this exerciſe repeated at intervals, and felt their bodies as the one lay above the other. On the ſecond occaſion, day-light came in, and *ſhe ſaw* that Miſs Pirie was lying above Miſs Woods. She ſpoke to them on both occaſions; ſhe detected a little female artifice of Miſs Pirie, who repreſented herſelf as ſtanding beſide the bed when actually below the clothes, an artifice indicating conſcious guilt, and fatal to all the wretched explanations which the petitioners have attempted of their conduct. She remembers the particulars of the converſation ſhe had with them; ſhe remembers being ſent to the dreſſing-room for a glaſs of water; ſhe remembers to have gone to the ſide of the bed, to have ſeen Miſs Pirie in bed, and to have given her a knock on the elbow, that ſhe might know her ſituation was obſerved. If all this was imagination, Miſs Munro may diſtruſt the evidence of her ſenſes for life. If the direct teſtimony of an unſuſpected witneſs can be ſo invalidated, all parole proof muſt henceforth be of no avail.

But it is time to proceed to the ground on which the petitioners ſeem

ſeem chiefly to rely for an alteration of your Lordſhips' interlocutor. Their whole ſtrength is put forth in a laborious and painful attempt to diſcover minute inconſiſtencies and contradictions in the prodigious maſs of evidence which they have accumulated; and to exaggerate their importance, and blazon them in falſe and extravagant colours. Before conſidering their objections in detail, the reſpondent begs leave to ſubmit one general obſervation upon this branch of the petitioners' caſe.

It is well known to your Lordſhips, that all human teſtimony is eſſentially imperfect, and to a certain extent erroneous. No mind can perceive or comprehend all the circumſtances actually attending an event. The external ſenſes are defective; miſtaken inferences are deduced from the information which they communicate, and of the current of ideas which paſſes through the mind, a great proportion ſcarcely attracts attention at the time, and a ſtill greater proportion eſcapes from the memory afterwards. The picture which is recalled at the diſtance of a conſiderable interval, is faint and obſcure, and fancy ſometimes interferes to alter or to confuſe it. When it is brought out in language, a new and ſtill more imperfect tranſcript of the original is obtained, from the inadequacy of that inſtrument to repreſent the full and entire proceſs of thought. In addition to this, when teſtimony is given, (as it uſually is in a court of law,) upon the interrogatory of others, a difficulty ariſes from the miſconception of queſtions or anſwers, and by occaſional failure of attention, preſence of mind, or expreſſion. Hence, in the ſtory of one individual, inconſiſtencies and contradictions will frequently ariſe. But the accounts which different individuals give of the ſame event, are ſtill more apt to vary, from a difference in natural and acquired powers, feelings and habits, and from a multitude of other cauſes. It is therefore an eſtabliſhed rule in the law of evidence, derived from the obvious principles of human nature, that if the great outlines of a narrative are conſiſtent with themſelves, or with the narrative of another perſon, no minor diſcrepancies will ſhake its authority. On the contrary, ſuch imperfections rather confirm it, becauſe they exclude the ſuppoſition of preconcert. In ſupport of this obſervation, ſo familiar to every perſon who has turned his mind to the ſubject, a reference to authorities would be ſuperfluous; but the reſpondent cannot forbear to quote a paſſage from the writings of Dr Paley, which ſeems peculiarly applicable to the mode in which

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Evidences of Chriſtianity, vol. ii. p. 289.

the argument of the petitioners is conducted: 'I know not a more 'raſh or unphiloſophical conduct of the underſtanding, than to re- 'ject the ſubſtance of a ſtory by reaſon of ſome diverſity in the 'circumſtances with which it is related. *The usual character of* 'human testimony is substantial truth, under circumstantial variety. 'This is what the daily experience of courts of juſtice teaches. 'When accounts of a tranſaction come from the mouths of dif- 'ferent witneſſes, it is ſeldom that it is not poſſible to pick out 'apparent or real inconſiſtencies between them. Theſe incon- 'ſiſtencies are ſtudiouſly diſplayed by an adverſe pleader, but of- 'tentimes with little impreſſion on the minds of the judges. On 'the contrary, a cloſe and minute agreement induces the ſuſpicion 'of confederacy and fraud. When written hiſtories touch upon 'the ſame ſcenes of action, the compariſon almoſt always affords 'ground for a like reflection. *Numerous, and sometimes important* 'variations, present themselves; not seldom, also, absolute and final 'contradictions; yet neither one nor the other are deemed sufficient to 'shake the credibility of the main fact.'

In addition to the ordinary cauſes which produce inconſiſtency or diſcrepancy in human teſtimony, the reſpondent has already touched upon ſeveral which are peculiar to the preſent caſe. The early youth of the young ladies who were examined,—the diſtreſſing nature of the ſubject of inquiry,—the agitation produced from being examined for the firſt time in a court of juſtice, and compelled to reveal, in preſence of ſtrangers, what they had ſcarcely courage to breathe in the ear of a parent—the long interval which had elapſed from the occurrence of the events of which they were required to give an account,—and, above all, the circumſtances attending their examination, which in the caſe of Miſs Cumming at leaſt, rendered it beyond meaſure tedious, exhauſting and perplexing, muſt all be taken into account, if the import of her teſtimony is to be fairly and candidly appreciated. If this be done, the reſpondent is confident that the interlocutor under review will never be diſturbed. Keeping theſe obſervations in view, your Lordſhips will proceed to examine this branch of the argument in the petition; and unleſs the reſpondent is much miſtaken, you will find, that the evidence has more ſubſtantial agreement, and leſs circumſtantial variety, than could have been expected in any inveſtigation of the ſame deſcription and magnitude.

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The petitioners begin with noticing, that Miſs Cumming had never ſpoken of their miſconduct till two months after the holidays. They are pleaſed to infer, that all the time from the holidays, 'ſhe had been forming ſchemes, and applying her invention to ac-'cidental circumſtances;' an aſſumption perfectly gratuitous, and not leſs incredible. This young girl of ſixteen was employed for two months in a ſolitary and deliberate preparation of ſchemes for accuſing them! and all this, as has already been ſhewn, without the leaſt appearance of malignity in her character, or any imaginable motive, that could have incited her to ill will againſt the petitioners.

The petitioners then notice the ſtrange noiſe in the holidays, which, with their uſual aſſumptions, they ſay, Miſs Cumming brings in to 'eik her ſtory,' and which, on the contrary, ſhe never could have thought of mentioning, if it had not been true.

They ſay, that from about three weeks after the holidays, till about the 20th September, Miſs Cumming deſcribes the viſits to her bed to have continued. They accuſe her, by inſinuation, of falſehood; becauſe, when examined five or ſix months after, ſhe could not recollect the preciſe dates,—an inſinuation which is not worthy of any anſwer. And they ſay, ſhe had *a meaning* in ſwearing poſitively, that after the laſt time ſhe does mention, their interviews ceaſed; which is juſt another aſſumptive averment, ſince there is not in her evidence the leaſt appearance of any particular meaning.

The petitioners then employ themſelves in an attempt to ſhew, that the communication made by Miſs Cumming to Miſs Munro was previous to the firſt occaſion when Miſs Munro perceived any thing improper between the petitioners, in order, with their uſual candour, to infer from it, that Miſs Cumming was the origin and contriver of the calumny. The reſpondent has already obſerved, how abſurd and unjuſt ſuch an inference muſt be. All truth muſt be firſt communicated by ſomebody, and yet, according to the petitioners, the very circumſtance of firſt communicating it entitles them to call it falſehood. But, moreover, what Miſs Munro depones to, is not what was communicated to her by any mortal, but the information of her own ears, eyes and touch. It is truly, therefore, of little moment which of theſe two witneſſes firſt mentioned the matter to the other. Each of them, indeed, ſeems to think that ſhe did firſt mention it; and Miſs Cumming, in particular, ſhews the moſt perfect want of all intention of imputing the firſt knowledge to Miſs Munro.

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There ſeems to be very little occaſion for attending to the very
Pet. p. 55. uncertain dates to which the petitioners attempt to call your Lordſhips attention on this point. The fact appears to be more clear by Miſs Cumming's depoſition, that ſhe had no communication with Miſs Munro till after the laſt occaſion when Miſs Woods came to her bed.

What that communication was on the part of Miſs Munro, is not quite ſo clear. It appears, however, to the reſpondent with ſufficient certainty, that on that occaſion, Miſs Munro mentioned both the *firſt* occaſion of obſerving the petitioners in her bed, and the *fright* ſhe had got antecedently, to which ſhe refers. Miſs
State, p. 49. C, D. Munro depones, 'That ſhe has had converſations with Miſs Cumming about what had happened; and in particular mentioned to her what had happened *on one of the above occaſions; when* Miſs *Cumming anſwered, that ſhe was accuſtomed to be ſo diſturbed.*' Now it is perfectly certain, that this occaſion was one of thoſe when Miſs Munro perceived Miſs Pirie in her bed, becauſe the two occaſions of that ſort only had yet been mentioned.

—— p. 62. B, C. Afterwards, 'being interrogated, Whether, after the occaſion prior to the two times, when ſhe is certain the purſuers were in bed together, being that on which ſhe has depoſed ſhe wakened in a fright, thinking there was ſomebody in the bed, ſhe mentioned that circumſtance to Miſs Cumming, or to Charlotte the maid, or had any converſation with them about it? depones, *That ſhe did mention that circumſtance to Miſs Cumming; and it was upon that occaſion Miſs Cumming told her ſhe had been accuſtomed to be ſo diſturbed,* and that ſhe at the ſame time added, that Charlotte the maid had told her, Miſs Cumming, that ſhe had noticed the behaviour of
—— p. 60. A. and p. 61. A. the purſuers.' And in another place, 'And being deſired to explain how ſhe came to ſay ſo to the maid, depones, That Miſs Cumming having previouſly told that the maid knew of the purſuers behaviour, the witneſs merely uſed theſe expreſſions to introduce the converſation. And being further interrogated by Lord Meadowbank, How long it was before this converſation that Miſs Cumming told her that the maid knew of their behaviour? depones, That ſhe does not recollect exactly how long, *but it was two or three days before.*' It is plain, therefore, that Miſs Munro's communication about the *fright* was only two or three days before the laſt of her occaſions; for it was after that occaſion that ſhe ſpoke to the maid. There can be no doubt, then, that

that this was not earlier than the converſation in which Miſs Munro mentioned to Miſs Cumming her firſt perception of Miſs Pirie in her bed. Mary Brown accordingly depones, 'That Miſs 'Munro told her that ſhe had complained to Miſs Cumming of 'being thus diſturbed, and that Miſs Cumming told her the ſame 'thing had often happened to her, as Miſs Woods frequently came 'to Miſs Pirie's bed, where ſhe ſlept.' And Miſs Cumming has no particular recollection of the fright, and no remembrance of any converſation with Miſs Munro, previous to that on which ſhe mentioned the firſt occaſion. 'Interrrogated, Did Miſs Munro 'make communications to the witneſs of ſingular occurrences be-'tween the purſuers? depones, Nothing, except that Miſs Munro 'ſaid the other night Miſs Pirie had been in Miſs Woods' bed, and 'that they were going on in ſuch a curious way ſhe could not 'think what they were doing. Interrogated by Lord Meadow-'bank, Did Miſs Munro then, or before that time, mention to the 'witneſs that ſhe had waked in a fright the preceding night, 'thinking there was ſomebody in bed with Miſs Woods, but was 'not certain whether or no? depones, She does not remember it. 'And being aſked, If ſhe is poſitive ſhe did not? depones, She 'does not remember it juſt now.' From theſe paſſages, it ſeems plain, what indeed was naturally to be expected, that Miſs Munro did not mention to Miſs Cumming the wakening in a fright, as a diſtinct occaſion by itſelf, but along with, and in conſequence of her mentioning that ſhe had actually perceived the petitioners in her bed. Indeed, this is plain from the whole ſtrain of Miſs Munro's depoſition, which manifeſtly infers that ſhe had not any communication with Miſs Cumming previous to her firſt obſerving Miſs Pirie in her bed.

State, p. 64. II.

— p. 87. I., & 88. A.

Miſs Munro, then, had ſeen the petitioners in her bed the firſt time antecedently to any communication from Miſs Cumming at all; and the petitioners are as little correct in point of fact, as they are candid in their inference. Your Lordſhips will obſerve, too, that Miſs Cumming, who had been two months maturing a plot, according to the petitioners, did not poſſeſs Miſs Munro with any horrid idea of the criminality of the petitioners on this occaſion; for both Miſs Munro and Mary Brown ſay, that it was *from the latter* Miſs Munro firſt had that idea. What Miſs Munro perceived and thought on that firſt occaſion, ſhe tells herſelf. It does not appear that ſhe made a very full communication to Miſs Cumming, or

Miſs Cumming to her; but what they do appear to have communicated was exactly according to the truth.

The ſuppoſition, theory, or accuſation of the petitioners againſt Miſs Cumming, with regard to Miſs Munro, is in every reſpect void of foundation.

Equally unfounded are their aſſertions regarding Miſs Stirling. She, to be ſure, was not a witneſs to any of the petitioners' obſcenities, and therefore could know only what ſhe was told. But is it to be endured, in argument, that, merely becauſe Miſs Cumming did not conceal theſe facts, ſhe is to be held as inventing falſehoods, and labouring to create belief in them? The petitioners' doctrine would be truly a ſalutary one for delinquents, ſince it would leave witneſſes only the choice of ſilence or perjury. The allegations that Miſs Cumming invented converſations with Charlotte, are wholly unfounded, as will afterwards be ſhewn, when the charge is more fully made by the petitioners, and anſwered by the reſpondent. And it has already been demonſtrated, that both Miſs Munro and Miſs Stirling heard with their own ears, communications from Charlotte's own mouth, demonſtrative of her knowledge of the petitioners' guilt.

As to the pleadings which the petitioners here notice, the reſpondent has ſpoken already, and will not reſume that ſubject.

The petitioners begin, after theſe obſervations, with a remark on Miſs Cumming's depoſition in regard to Miſs Woods having been in the room in her *day-dress*. They accuſe Miſs Cumming of unfair ſuppreſſion of that circumſtance. But Miſs Cumming was never queſtioned regarding this circumſtance; nor does it appear by Miſs Stirling, or any other witneſs, that Miſs Woods was obſerved in Miſs Cumming's room in her day-dreſs. If this was the fact, it muſt have been at a very different time from thoſe mentioned by Miſs Cumming; and the petitioners' counſel made no attempt to prove this fact which they ſay Miſs Cumming ſuppreſſed, by any one of the girls in the room. Mrs Woods only ſays, Miſs Woods uſually left her, *after supper*, in her day-dreſs, and *one night* ſtaid late; which ſhews nothing that it could be neceſſary for Miſs Cumming, in any view, to ſuppreſs.

The petitioners then advert to Miſs Pirie's general or uſual night wear, which they exaggerate into a complete covering, and accuſe Miſs Cumming of unfairneſs in ſuppreſſing.

Your

Your Lordſhips will already have obſerved the exaggeration of this. It evidently was nothing more than ſtockings, an under petticoat, and a common cotton wrapper, with which Miſs Pirie ſlept under the bed-clothes; articles which, in regard to the practices of which the petitioners were guilty, are quite immaterial. Suppoſe the charge had been adultery, would theſe have been thought of any conſequence? And why ſhould they be otherwiſe regarded in this caſe?

Then, your Lordſhips will obſerve, too, that the perſon who came to Miſs Cumming's bed was Miſs Woods, who wore no ſuch articles; and as to Miſs Pirie having them on in bed, it will afterwards be more fully ſhewn, that this was a circumſtance of no material conſequence whatever. The petitioners ſay, that they will point out parts of Miſs Cumming's evidence that are nonſenſe, when the fact of Miſs Pirie's uſual night wear is attended to; but the reſpondent will ſhew, when the petitioners make that attempt, that they are completely unſucceſsful.

After all, how was the fact of Miſs Pirie's uſual night wear known? The petitioners ſay, the *ſtockings came out*. But it came out by a voluntary obſervation of Miſs Cumming at the concluſion of her ſecond day's examination. State, p. 85. A.

And as to the other articles, Miſs Cumming deponed to them as ſoon as ſhe was queſtioned; and it was the fault of the petitioners themſelves that this was not done at firſt. Can your Lordſhips think, when the petitioners themſelves were preſent at her examination, that Miſs Cumming, if ſhe had been contriving, and had thought this circumſtance material, could have hoped that it could be hidden, and no queſtion aſked about it?

The petitioners ſay ſhe knew it could be proved by Miſs Stirling; but will your Lordſhips believe, if ſhe reflected on that, ſhe would not be far more ſure that the petitioners would aſk herſelf about it. And your Lordſhips ſee, that, when aſked, ſhe inſtantly and fairly deponed to it. There is, therefore, not the ſmalleſt reaſon to think that this circumſtance had ever occurred to the mind of the witneſs till ſhe actually mentioned it, or that ſhe attached any importance to it whatever. Indeed, it would ſeem that the petitioners themſelves, who were ſo long of ſuggeſting it to their counſel, had viewed it in the ſame light.

The petitioners, after theſe general objections, proceed to analyſe the evidence with regard to the few occaſions more minutely; and

and through that analyſis the reſpondent will now proceed to follow them.

Pet. p. 66.

1. The firſt occaſion on which they obſerve, is that on which Miſs Cumming heard Miſs Pirie ſay, 'O you are hurting me.' The petitioners are pleaſed to ſay, that this is *literally* all that, on direct examination, Miſs Cumming had to ſay in regard to this one occaſion. They then aſk, How is it extended on the croſs examination? And they reply to themſelves, that it was by this paſſage: 'Interrogated, and deſired to mention all that paſſed between 'Miſs Woods and Miſs Pirie on the occaſion when ſhe heard Miſs 'Pirie ſay, 'O you are hurting me,' depones, That ſhe does not 'recollect any thing more at preſent, except that ſhe felt one of 'them move, which ſhe thinks was Miſs Woods, and thereafter 'Miſs Woods went away, but does not think Miſs Woods was 'moving at the time Miſs Pirie made that obſervation; and ſhe 'thinks it was Miſs Woods who was lying above Miſs Pirie at 'the time of that obſervation, becauſe it was Miſs Woods who 'went away.' 'This,' ſay the petitioners, 'is the whole ſtate-'ment upon one occaſion. Miſs Cumming has abſolutely no 'more to ſay; and yet, becauſe Miſs Pirie on one occaſion, as 'ſhe pretends, ſaid 'O you are hurting me,' the imagination of 'Miſs Cumming concludes or ſuſpects that there was an infamous 'venereal congreſs.' They go on to ſay, 'ſhe has abſolutely no-'thing elſe to go upon, except what ſhe applies generally to every 'caſe, that there was whiſpering, kiſſing, and ſhaking the bed;' and then they argue, that there is nothing affording even a conjecture of any thing wrong; and it is all explained by admitting that Miſs Pirie may have been rubbed for the rheumatiſm. Such is the argument of the petitioners on this point.

Now, what is the truth of the caſe?

State, p. 70. D, E., F.

In the direct examination, Miſs Cumming ſays: 'Interrogated 'If at any time when Miſs Woods came to Miſs Pirie's bed, the 'witneſs heard any thing more than kiſſing and whiſpering? de-'pones, Yes. Interrogated, What was it? depones, She heard 'Miſs Pirie ſay one night, 'O you are hurting me.' Interroga-'ted, If ſhe heard or obſerved any thing more? depones, She 'heard Miſs Woods one night aſk Miſs Pirie if ſhe was hurting 'her. Interrogated, If on any of theſe occaſions Miſs Woods 'was in the bed with Miſs Pirie and the witneſs? depones, Yes

'be-

'*both times.* Interrogated, How Miſs Woods and Miſs Pirie 'were lying *on theſe occaſions?* depones, *One of them was ly-* 'ing *above the other. Interrogated, Were they in that ſituation* 'when *Miss Pirie ſaid, 'O you are hurting me,' as above depo-* 'ned *to? depones, Yes.*' Thus your Lordſhips ſee how perfectly incorrect the petitioners ſtatement is as to the direct examination. Miſs Cumming there depones to the moſt material by far of all the circumſtances, viz. 'That one of the perſons was lying 'above the other.' And it is plainly with a reference to this that the witneſs ſpeaks in the croſs-examination; for ſhe there ſays, that ſhe thinks it was Miſs Woods who was lying above Miſs Pirie at the time of that obſervation. When the matter is thus fairly ſtated, What becomes of the petitioners' argument, that nothing even ſuſpicious is ſaid to have taken place on that occaſion? Is the lying one above another of itſelf not ſuſpicious, or not concluſive as to acts of luſtful indecency? Was it in that poſture Miſs Pirie was rubbed for the rheumatiſm? And did Miſs Woods come in the dead of night to her bed to perform that operation in that way? If your Lordſhips could believe this, it would indeed be needleſs for the reſpondent to argue. But the reſpondent cannot doubt, that if theſe facts be proved, as it is but too certain they are, your Lordſhips will think the deſperate gloſſes of the petitioners unworthy of attention.

2. The petitioners then proceed in the ſame ſpirit to comment upon the ſecond occaſion. 'In the direct examination,' they ſay, 'Miſs Cumming proceeds, 'That ſhe heard Miſs Woods one time "aſk Miſs Pirie if ſhe was hurting her, and Miſs Pirie ſaid, No.' '*This is all.*' Upon the croſs-examination, examined, and de- "ſired to mention all that had happened on the occaſion when "Miſs Woods aſked Miſs Pirie if ſhe was hurting her, depones, "Nothing, but that ſhe felt one of them move, which ſhe thinks "was Miſs Woods, who afterwards went away; and for the ſame "reaſon ſhe thinks Miſs Woods was then lying uppermoſt.' This 'is the whole account of another occaſion. Nothing but the moſt 'polluted imagination could dream of ſuch a concluſion from an 'incident of that nature, if it had taken place,' &c. Pet. p. 66.

Now, your Lordſhips have ſeen what Miſs Cumming *did* ſay in the direct examination. She expreſsly ſaid, that the purſuers were *lying one above the other on that laſt occaſion, as well as on the other;* and

accordingly, juſt as in regard to the preceding occaſion, the croſs-examination refers to that circumſtance already depoſed to; for it bears that the witneſs thinks 'Miſs Woods was then lying up-'permoſt,' becauſe ſhe went away. The reſpondent has only to repeat her former obſervations.

Pet. p. 67. 3. The petitioners then paſs to a third occaſion, on which they preſent a long elaborate comment, of a moſt extraordinary nature, which nothing but the moſt painful nature of the caſe could have prevailed upon the reſpondent to anſwer with ſerioufneſs. A more ſtriking inſtance of contradiction to the rule, 'Ex *nihilo nihil* 'fit,' the reſpondent certainly never heard of.

Miſs Cumming had depoſed, that 'ſhe heard Miſs Pirie ſay 'one night, 'You are in the wrong place;' and Miſs Woods ſaid, "I know;' and Miſs Pirie ſaid, 'Why are you doing it then?' 'and Miſs Woods ſaid, 'For fun;' and ſhe awakened one night 'with a whiſpering,' &c. On the croſs-examination, Miſs Cumming depoſed, 'That Miſs Woods moved after this converſation 'had gone on, and ſoon after went away;' and further, on an interrogatory by the Court, 'Whether ſhe is quite certain that they 'might not have ſaid *on* the wrong place?' ſhe depoſed, 'That 'ſhe is quite certain the words uſed were '*in* the wrong place." The petitioners, with an affectation of great earneſtneſs, begin by ſaying that it is abſolutely neceſſary for your Lordſhips to determine, and for the reſpondent to ſay, whether this ſtatement is to be believed or not, and then proceed articulately to enlarge upon the conſequences on either ſuppoſition, with all the violence of language which the eloquence of their counſel could ſupply.

Pet. p. 67. Firſt, they ſay, that if it be maintained Miſs Cumming is to be believed here, 'your Lordſhips muſt give her credit for an accu-'racy of ear in liſtening to whiſpering, ſtammered out in the heat 'of maddening luſt, which you will not take to yourſelves in liſ-'tening to the graveſt ſtatement that ever was made at your 'Lordſhips' bar, or face to face.' Now, in the *firſt* place, the reſpondent muſt obſerve, that *maddening luſt* is a gratuitous addition made to the circumſtances of the caſe by the petitioners. The laſcivious gratification which the petitioners indulged in, appears to have been the object of propenſity, powerful certainly, but *habitual* rather than *furious*. In the *next* place, where is there any thing ſurpriſing in the circumſtance, that Miſs Cumming on that occaſion

occaſion ſhould happen to recollect the expreſſion 'in the wrong 'place?' The whiſpering which hindered her from hearing much of what was ſaid, naturally enabled her to remember the better what ſhe did hear; and a whiſpered expreſſion, if heard, is in all caſes *at leaſt* as well remembered as any other. The compariſon of this nocturnal converſation to a ſtatement at your Lordſhips' bar, ſeems to the reſpondent a ſpecimen of forced aſſimilation that hardly can be exceeded. It is however gravely ſtated, as if your Lordſhips, occupied during the whole of every forenoon with the ordinary buſineſs of hearing counſel, could give ſuch a recollective attention to their expreſſions on any particular occaſion as Miſs Cumming muſt neceſſarily have done to the few words ſhe heard in ſo remarkable a manner.

The petitioners next ſay, that the certainty of Miſs Cumming as to the expreſſion, ſhews the utmoſt pollution of imagination, and a degree of inveteracy inconſiſtent with any degree of fairneſs; and further, your Lordſhips muſt conclude, that you are not only trying that ſpecies of abominable perverſion, of which the defender has ſtruggled to prove the exiſtence, but that you are trying a degree of beſtiality that never was equalled in the hiſtory of the world; you have a double unnatural crime, &c.

Now, as to all this, the reſpondent can only ſay, that it is altogether unjuſt and ſophiſtical, and conſiſts entirely in an attempt to force upon the witneſs a gratuitous hypotheſis, invented by the petitioners themſelves, or the ingenuity of their counſel. The witneſs no where hints, that ſhe attached any importance whatever to the word *in*, diſtinctively from *on*; though happening, as was perfectly natural, to recollect that the particular words uſed were, 'in the wrong place,' ſhe ſaid, that ſhe did ſo recollect them. The reſpondent is perfectly confident, that it never would occur to any body reading the depoſition, without preoccupation, that the word *in* had any particular importance attached to it by the witneſs. When, therefore, the petitioners talk of a double unnatural crime, in the manner above mentioned; when they tell your Lordſhips, 'that the idea is ſo diſguſting,—that no woman 'would have permitted herſelf to be certain upon ſuch a particu-'lar, who was not prepared to go any length to ſerve her own 'manifeſt intereſt in the cauſe,' they are guilty of the moſt cruel, and at the ſame time, palpable unfairneſs towards this witneſs.

They

They *invent* an hypothetical concluſion, and work it up into all poſſible deteſtability; they ſubſtitute that hypothetical concluſion inſtead of the ſimple words which the witneſs narrated, becauſe ſhe had heard them, and ſaid ſhe was certain of, becauſe ſhe diſtinctly remembered them; and then they pour forth their reprobation upon this young girl, becauſe ſhe *had allowed* herſelf to be certain of this hypotheſis.

The reſpondent muſt beg leave to repeat, that all that Miſs Cumming ſaid ſhe was certain of, was, that Miſs Pirie did uſe the words, 'You are in the wrong place.' As to any idea of additional or more incredible criminality, or any preciſe or particular imagination of vice, ariſing from theſe words, that is to be found only in the declamation of the petitioners themſelves.

The petitioners call on the reſpondent to ſay what is her belief upon the ſubject. The reſpondent can only reply, She believes the witneſs heard the words to which ſhe ſwears, and can ſee no reaſon for thinking otherwiſe. The ſubject is as diſguſting to the reſpondent and her counſel, as it could be to the counſel of the petitioners. Nor is the reſpondent inclined to follow out, in conjecture, the preciſe import of thoſe expreſſions of laſcivious wantonneſs, nor is ſhe adviſed to diſcuſs the ſtrange diſtinction between acts of luſt that are ſimply or doubly unnatural. This, however, muſt have already occurred to your Lordſhips, that if it be proved, as it clearly is, that the petitioners were in the habit of indulging the tribadian laſciviouſneſs, there could not be anything ſurpriſing in one of them mingling ſome wantonneſs with her luſt, in the application of the excitement to the other. And this, it is ſubmitted, is plainly all that can be inferred from the words in queſtion. But the reſpondent muſt repeat, that the witneſs drew no inference, but merely depoſed to the words ſhe had heard.

As to the pretended inveteracy of Miſs Cumming againſt the petitioners, that has already been ſpoken to. The reſpondent may, however, again notice, in one word, the inconſiſtency into which the petitioners are conſtantly running. They had juſt been labouring to prove, that the circumſtances depoſed to by Miſs Cumming againſt them, in two inſtances, were quite innocent, and yet now they inſiſt that ſhe is actuated by the moſt inveterate malignity, and heedleſs of truth on her oath, thinking of nothing but making the circumſtances againſt them ſtrong enough.

The

Theſe two things are manifeſtly inconſiſtent, and the truth is, both of them are falſe. She has mentioned circumſtances on theſe inſtances that were concluſive, while at the ſame time ſhe limits what ſhe ſays to what ſhe truly recollects, and carefully abſtains from ſaying any thing more.

It is needleſs for the reſpondent to make any remark upon what the petitioners ſay on the ſuppoſition that Miſs Cumming is not to be believed in this part of her evidence, becauſe ſhe is certain your Lordſhips will ſee no reaſon for ſuch diſbelief. As to their obſervation on the expreſſion, *for fun*, it has already been anſwered. The conduct of the petitioners is *not* deſcribed as a ſcene of luſt ſo *furious*, as to be inconſiſtent with the uſe of ſuch an expreſſion: That is an aſſumption of the petitioners without foundation.

4. The petitioners then proceed to what they call the fourth occaſion, which, however, is not one of the occaſions when Miſs Woods was ſaid by Miſs Cumming to have been in Miſs Pirie's bed. The petitioners, however, are pleaſed to ſtate gravely, that this part of Miſs Cumming's evidence, in which ſhe depones to a converſation that took place between the petitioners, and which commenced by the words, 'Now, Jane, will you promiſe me one 'thing,' is a ſpecimen of her power of enlargement and embelliſhment, and that there is direct evidence ſhe had changed the words from what ſhe had originally repreſented them to be; and changed them for a groſs and manifeſt reaſon, to convey a different meaning! Theſe are ſtrong words, and ought not to have been uſed, without ſtrong reaſons to ſupport them. What, then, are the reaſons given by the petitioners? Pet. p. 69.

They ſay that Miſs Stirling has given an account of a deſcription given to her by Miſs Cumming of this converſation between the petitioners, and that this account is quite different from that deponed to by Miſs Cumming, when examined before your Lordſhips, and different in ſuch a way as to convict Miſs Cumming of the malignant perjury they are ſo ready to impute to her. Now, your Lordſhips would ſuppoſe, when ſuch an argument was uſed, that Miſs Stirling had given full and diſtinct evidence of a former account given to her by Miſs Cumming of *all* that paſſed in this particular converſation of the petitioners with one another. When the petitioners ſay they are to 'bring under your 'Lordſhips' notice, *the firſt edition of this converſation*, your Lordſhips

ſhips certainly could expect nothing leſs. But what is the fact? Miſs Stirling, on whom it is no imputation to ſay, that ſhe was on this occaſion a reluctant witneſs, who had been commanded by her mother to diſcharge the whole matter from her mind, and whoſe inaccurate recollection is contended for by the petitioners themſelves, is partly unable, partly unwilling,—an unwillingneſs to which indulgence was ſhewn,—to give any thing the leaſt reſembling a full account of any one particular converſation that ever was mentioned to her by Miſs Cumming, and ſhe herſelf ſays, Miſs Cumming did *not* tell her *all* that ſhe heard. Miſs Stirling merely mentioned ſome ſcattered recollections of particular expreſſions that were reported to her, declaring at the ſame time, the imperfection of her own recollection. Being interrogated, 'Did 'Miſs Cumming ever mention to the witneſs having heard whiſ- 'pers or converſations between the purſuers when they were in 'Miſs Cumming's bed? depones, That ſhe did, and ſome of theſe 'converſations ſhe told the witneſs, and ſome of them ſhe ſaid 'that ſhe would not tell her. Being interrogated, If Miſs Cum- 'ming told her much of theſe converſations? depones, That ſhe 'ſaid they *always* began with Miſs Woods aſking Miſs Pirie, "Have you on your ſtockings;' and another time, that Miſs 'Woods ſaid, 'Not to night, for it may awaken Miſs Stirling, and 'perhaps Miſs Anſtruther,' and that the one ſaid to the other, "Love me as I love you;' and ſhe does not remember any thing 'diſtinctly, and therefore does not wiſh to ſpecify it.'

State, p. 113. & p. 114. I. to C.

It is manifeſt how far this is from ſuch a full, particular and certain evidence of a former ſtatement by Miſs Cumming of any particular converſation, far leſs the whole of any one; and it is certainly a moſt exceſſive exaggeration in the petitioners to repreſent it as containing '*the firſt edition*' of the converſation depoſed to by Miſs Cumming, in the part of her evidence under conſideration. There is no room to ſuppoſe Miſs Cumming told Miſs Stirling that any of the expreſſions ſhe remembered were uſed on the particular night in queſtion, far leſs that they formed the whole that was ſaid on that particular night. As to the expreſſion about the ſtockings, it is wholly unimportant, and ſuch as Miſs Cumming might naturally mention on one occaſion, and yet afterwards not remember. That Miſs Cumming ſaid, that all the converſations began with that expreſſion is itſelf quite incredible, and

can

can be nothing elſe than ſome inaccuracy in Miſs Stirling's recollection. The other aſſertion of the petitioners, that Miſs Cumming has changed the expreſſion, 'Love me as I love 'you' into 'but you may kiſs me, and I will kiſs you,' is mere aſſumption. There is no reaſon to ſay that they did not uſe *both* expreſſions on different occaſions, and particularly no reaſon whatever for believing, that when Miſs Cumming mentioned to Miſs Stirling, that they had uſed the former expreſſion, ſhe alluded to the ſame occaſion, when ſhe afterwards depones ſhe uſed the latter. It is really fatiguing your Lordſhips unneceſſarily to go over minutely ſuch objections founded, on ſuch evidence as this part of Miſs Stirling's depoſition..

5. The petitioners, in the *fifth* place, direct their argument to that part of Miſs Cumming's evidence, in which ſhe depones, 'That 'ſhe was awakened one night with a whiſpering, and heard Miſs 'Pirie ſay, 'O do it, darling,' and Miſs Woods ſaid, 'Not to-night;' 'Miſs Pirie aſked her two or three times, and then Miſs Woods 'ſaid, 'O, not to-night, for it may awaken Miſs Cumming, and "perhaps Miſs Stirling;' then Miſs Pirie preſſed her again to come 'in, and ſhe lay above Miſs Pirie: That Miſs Woods began to 'move, and ſhe ſhook the bed, and ſhe heard the ſame noiſe as ſhe 'heard on the holidays. And being deſired by the Lord Juſtice-'Clerk to deſcribe the kind of noiſe as near as poſſible? depones, 'That putting one's finger into the neck of a wet bottle, is the 'likeſt deſcription ſhe can give of it; then the witneſs aſked 'Miſs Pirie what was ſhaking the bed ſo, and Miſs Pirie anſwered, "Nothing;' and when ſhe aſked Miſs Pirie what was ſhaking the 'bed, ſhe felt Miſs Woods move over to the other ſide of the bed, 'and ſhe thinks it was that night ſhe heard Miſs Woods ſay, 'I "would like better to have ſomebody above me.' Referring to the ſame occaſion, ſhe ſays 'the witneſs lay awake a long while, and 'complained that ſhe could not ſleep, and Miſs Pirie deſired her 'ſeveral times to turn her face to the wall, and try to ſleep; but 'the witneſs did not turn, and ſaid ſhe could not ſleep, and then 'Miſs Pirie turned and ſaid 'Now, you muſt turn, as I have turned,' 'and then ſhe heard Miſs Woods go out of the room; and when 'Miſs Woods came to the door, Miſs Pirie coughed, that the wit-'neſs might not hear it opened; and a little while after Miſs 'Woods was gone, Miſs Pirie ſaid to the witneſs, 'Have you heard "Miſs Woods cough to-night?' and the witneſs ſaid, 'No;' in a 'little

Pet. p. 71. State, p. 70. I.; 71. A, B, C. F. G, H.

State, p. 71. F, G, H.

‘ little, Miſs Woods coughed, and Miſs Woods ſaid, ‘ O there ſhe’s
“ coughing, poor ſoul! I muſt go and ſee her,’ and ſhe went.
‘ When Miſs Woods came to bed that night, the witneſs felt them
‘ both lift up their ſhifts.’

The petitioners begin by remarking, ‘ that it is impoſſible not to
‘ obſerve, that there is here the utmoſt perfection and minuteneſs in
‘ the ſuppoſed dialogue, mixed up with inferences and inſinuations
‘ of the witneſs’s own; but, on the other hand, the moſt careful
‘ avoidance of particularity as to the manner and circumſtances
‘ of the acts which ſhe relates.’ To this the reſpondent muſt re-
ply, that in every particular the obſervation is incorrect and un-
juſt. There is *not* the utmoſt perfection and minuteneſs in the
dialogue, nor any perfection or minuteneſs in the ſmalleſt degree
ſurpriſing. The witneſs depones to ſuch expreſſions in the con-
verſation as ſhe heard and recollected; but ſhe does *not* minutely
repeat any long train of dialogue, nor, the reſpondent muſt con-
fidently repeat in direct contradiction to the petitioners, does ſhe
depone to any thing that it is in the ſmalleſt degree improbable ſhe
ſhould have remembered. Neither can it be ſaid, without equal
unfairneſs, that this dialogue is mixed up with *inferences* and *inſi-
nuations* of the witneſs’s own. There is only one inference of the
witneſs, if it will bear that name, which is perfectly natural and
fair, and juſt ſuch as every perſon at all accuſtomed to evidence
knows the moſt unexceptionable witneſſes conſtantly uſe: That is,
when the witneſs ſays, that when Miſs Woods came to the door,
Miſs Pirie ‘ *coughed that the witness might not hear it opened.*’ The
reſpondent muſt repeat, that a witneſs truly hearing a perſon *affect
to cough*, in order to hide another ſound, would quite naturally, and
without the ſmalleſt blame or ſuſpicion, mention the fact in ſuch
terms. If ſuch an objection had been ſtated to the teſtimony
of a common witneſs, in the Court of Juſticiary, the counſel
would have been laughed at even by the jury; but againſt Miſs
Cumming every thing that is frivolous is to become important.
As little is it true, that there is any *avoidance* of particularity as to
the acts. There is juſt ſuch particularity as it was natural for
a young girl in ſuch a ſituation to obſerve and recollect; and there
is only a want of ſuch particularity as it was not reaſonable ever
to have expected.

The petitioners, however, proceed to ſupport this laſt objec-
tion more in detail. They ſay ‘ there were in this ſtatement
‘ ſeveral matters of fact, which, if true, admitted of and re-
‘ quired

'quired a more particular deſcription.' They then proceed, without any natural order whatever, to ſtate the circumſtances on which they mean to inſiſt? 1*ſt*, The nature of the noiſe ſo ſingu-'larly deſcribed, and the circumſtances which led the witneſs to 'conſider that as deciſive of indecency or criminality.'

Now, the very ſtating of this head of inquiry, contains a moſt inaccurate repreſentation of what the witneſs ſaid. She never ſaid that ſhe conſidered this noiſe as 'deciſive of indecency or crimi-'nality.' On the contrary, ſhe depones, with regard to the whole conduct of the petitioners, that, even at the time of examination, 'ſhe thought it very improper and very indecent, but ſhe does not 'know whether it was *criminal*.' And as to the particular noiſe in queſtion, ſhe depones, p. 80. that ſhe heard that noiſe during the holidays; and on being immediately interrogated, 'Whether ſhe at that 'time conceived the petitioners were doing any improper act? 'ſhe depones, *That ſhe did not*.' It is therefore perfectly plain, that ſhe never did conſider this noiſe as deciſive even of indecency, to ſay nothing of criminality. It is very true, that as this ſtrange noiſe occurred on the night more particularly in queſtion, along with the coming into the bed, the lying one above another, taking up the ſhifts, the moving, the quick breathing of Miſs Woods, that ſhe mentions it along with theſe things, as what made her think there was indecency; and is this ſurpriſing? Is it not, on the contrary, perfectly natural and unſuſpicious? Among many circumſtances, indicating a *ſtrange* indecency, is mixed a *ſtrange* noiſe: it would truly have been ſurpriſing, if the witneſs had not thought this noiſe had ſome connection with the indecency. Accordingly the witneſs herſelf, when croſs-examined how the noiſe came to ſtrike her as one of the circumſtances that made her certain that the petitioners were indecent together, (which, by the way, it may be obſerved, was ſcarcely quite an accurate queſtion, as ſhe ought firſt rather to have been aſked, *Whether* ſhe did diſtinctly ſtate this as one of the circumſtances that made her certain?) ſhe anſwered, 'Becauſe ſhe felt Miſs Woods put down her hand before ſhe heard 'it;' *i. e.* becauſe, it (being ſtrange) occurred at the moment of the other circumſtances, the lying above, breathing, lifting ſhifts, &c. The anſwer was in truth a fair and true one, and, with ſubmiſſion, ought to have been accepted as ſuch. The petitioners ſay it was *no anſwer*; but it manifeſtly *was* an anſwer, and exactly the true anſwer to be expected from a perſon who had perceived what

State, p. 80. F.

—— p. 80. A. B.

Miſs Cumming had done. The repetition of the queſtion already anſwered, therefore unavoidably puzzled the witneſs, who could ſay nothing elſe than repeat her anſwer after a pauſe, produced by the perplexity between her idea that ſhe ought to anſwer when queſtioned, and her incapacity, with truth, to make any other anſwer than ſhe had actually made. The idea of telling the Court or counſel, that the queſtion was ſufficiently anſwered already, as it certainly was, could hardly be expected to occur to a young girl in ſuch a ſituation. It is therefore very incorrect in the petitioners to ſtate this noiſe as having been conſidered by Miſs Cumming deciſive of criminality. The plain fact is juſt this, that having heard this *ſtrange noiſe*, along with her perception of lying above each other, moving, whiſpering, &c. indicating a ſtrange indecency, the witneſs conſidered this noiſe, too, as connected with that indecency.

Having corrected this aſſumption of the petitioners, the reſpondent will next conſider the obſervations which they make on the nature of this noiſe. With regard to this, the petitioners quote the paſſage from the witneſs's depoſition. " Interrogated by the " Lord Juſtice-Clerk, How long the noiſe ſhe has deſcribed as re- " ſembling a finger in a wet bottle laſted? depones, She dare ſay " for about five minutes at a time. And interrogated, depones, It " happened three or four times during that meeting, but does not " remember whether it laſted as long as five minutes each time. In- " terrogated, Whether ſhe ever herſelf made any ſuch noiſe with her " finger in a wet bottle; or if ſhe ever heard any other perſon make " ſuch a noiſe with their finger in a bottle? depones. She never did; " nor did ſhe ever hear any perſon try to do ſo. Being interro- " gated, How ſhe came to deſcribe a noiſe which ſhe actually heard, " by being moſt like to a noiſe which ſhe never heard? depones, " Becauſe ſhe thought it would be the ſame.' ' His Lordſhip then ' endeavoured to get ſome better deſcription of it, and particularly ' aſked, ' If ſhe has ever heard a dairy-maid making butter, and if it " was any thing like a dairy-maid patting butter? depones, That " it was; and it was ſo loud, that ſhe heard it in the holidays, " though lying in a ſeparate bed. Interrogated, Whether ſhe had " ever heard any ſuch noiſe before or ſince, except between the " purſuers? depones, She does not remember ſhe ever did. Inter- " rogated, Whether any perſon had ever told her that any ſuch " noiſe took place between perſons when they were indecent toge- " ther?

Pet. p. 72.

" ther? depones, No. Interrogated, How then this noiſe came to " ſtrike her as one of thoſe circumſtances which made her certain " that the purſuers were indecent together? depones, Becauſe ſhe " felt Miſs Woods put down her hand juſt before ſhe heard it.' ' This being no anſwer, ' Interrogated, and the queſtion repeated, " How the noiſe came to ſtrike her as one of the circumſtances " that made her certain they were indecent? After long ſilence, " the witneſs made no other anſwer, than repeating what ſhe had " already ſaid."

On this the petitioners remark, ' It is not at all difficult to ſee Pet. p. 73. ' what the witneſs really *wiſhed* to make the Court believe. She ' had read or heard, that, in venereal intercourſe, natural or unna- ' tural, there might be a certain ſort of noiſe. But ſhe had got ' beyond her depth, and having no real fact to guide her, ſhe de- ' ſcribes what is abſolute nonſenſe, and totally inconſiſtent with ' any reality. But look at the deliberate and confeſſed invention ' by which ſhe attempted to ſupport the ſtory. In the firſt day's ' examination, ſhe was quite prepared with a *ready* anſwer to the ' queſtion. She anſwered *at once*, that putting one's finger in- ' to the neck of a wet bottle is the likeſt deſcription, &c. That ' this was *pure invention* ſhe afterwards expreſsly *confeſſed*, and ' your Lordſhips may eaſily aſcertain. And then thinking her- ' ſelf aſſiſted by the other likeneſſes put by the Judge, ſhe likened ' it to a thing ſo *totally* different, as to demonſtrate, that ſhe was ' not ſpeaking of any reality, but was merely *guessing* at ſome- ' thing which ſhe thought might attach criminality to the peti- ' tioners. But here alſo there was a total failure. It was like a ' maid patting butter, and *ſo loud, that ſhe heard it in the holidays, ' though in a ſeparate bed.* This reſembles nothing in nature, and ' nothing of the ſort which ſhe evidently wiſhed to deſcribe.'

It ſeems to the reſpondent, that it would be difficult to pro- duce an inſtance of an argument more unjuſt than this, uſed to ſupport a charge of wilful and malignant perjury againſt a wit- neſs.

There is no evidence whatever, nor probability, that the wit- neſs ' had read or heard, that in venereal congreſs there might be ' a certain ſort of noiſe.' On the contrary, her depoſition bears, when interrogated, ' Whether any perſon had ever told her that ' any ſuch noiſe took place between perſons when they were inde- ' cent together? depones, No;' and ſhe diſtinctly ſaid, that when ſhe

ſhe heard this noiſe in the holidays, it did *not* ſuggeſt to her any idea of indecency. It was only the union of it, with the other circumſtances, that made it be conſidered by her indicative of indecency. This, therefore, is mere gratuitous aſſumption of the petitioners, in oppoſition to evidence; and ſuch is the foundation on which they reſt charges of groſs perjury.

As little is there any reaſon for ſaying, that the deſcription of this noiſe is abſolute nonſenſe, and totally inconſiſtent with any reality. The noiſe (for it is neceſſary to ſpeak plainly where every thing is perverted) ſeems to have reſulted from the clapping of the bodies of the petitioners upon one another, and ſeparating them again in their tribadian exerciſe, and when moiſt with the effects of ſuch exerciſe, in ſuch a ſituation. This is at leaſt a very natural account of it, which has nothing in it impoſſible, or even improbable. It may be, that a man and woman in venereal congreſs do not ever make ſuch noiſe; but there is no evidence that *tribadism* is preciſely ſimilar to natural coition. On the contrary, it is manifeſt that it cannot be ſo. That, as there is no *penetratio*, there muſt be more *motion and concuſſion* to excite the venereal pleaſure to the degree in which, by thoſe means, it is impoſſible to doubt, (however hateful be the conſideration,) that it may be excited. That in ſuch a practice, therefore, there ſhould be a clapping of the one body on the other, ſufficient to make a noiſe, is not in the leaſt improbable. Such a noiſe, ſo cauſed, it is plain, might laſt four or five minutes,—might be heard by a perſon in another bed,—might not always occur, or always be equally loud in the tribadian congreſs,—and further, might, in every particular, anſwer the deſcription given of it by the witneſs, eſpecially that of being like *patting of butter*.

But, ſay the petitioners, the witneſs compared this ſtrange noiſe to the putting a finger into the neck of a wet bottle, and afterwards owned that ſhe had not actually tried or heard what noiſe was made by doing that. This, therefore, they ſay, was *pure invention*, &c. In ſhort, becauſe a witneſs, hearing a ſtrange noiſe, and not knowing well to what ſhe can compare it, happens to mention, by way of compariſon, a thing which ſhe thought ſhe knew, and her auditors knew, though ſhe had not preciſely experienced it, ſhe is at once to be ſet down as guilty of wilful perjury! Was there ever a caſe but this, in which ſuch an argument would have been gravely and confidently ſtated? It is plain, that if the witneſs

neſs had been inventing a ſtory, ſhe could juſt as eaſily have found a *real* noiſe, by experiment or recollection, of what ſhe had actually heard, fit to compare this invented noiſe to, as when ſhe was telling the truth ſhe could find what to compare the true noiſe to. It is even more probable, that, if ſhe had been inventing a ſtory, ſhe would have taken care to provide a proper compariſon, than when ſhe was telling what ſhe truly knew. In all probability the idea of the wet bottle occurred to the witneſs once occurred, was naturally and fairly mentioned to your Lordſhips.

But then, ſay the petitioners, 'thinking herſelf aſſiſted by the 'other likeneſſes put by the Judge, ſhe likened it to a thing ſo '*totally different*, (*i. e.* patting butter,) as to demonſtrate ſhe was 'not ſpeaking of reality.'

Now, what is it from which this laſt noiſe is ſaid to be ſo totally different? Plainly *from the idea*, erroneous it would ſeem, which the witneſs had of the ſound made by a finger in a wet bottle. How, then, can the petitioners pretend to ſay, that the one of theſe was ſo totally different from the other? It is plainly impoſſible for them to do ſo. Nor is it true, that the witneſs ſnatched at what ſhe thought the aſſiſtance of the Judge; for before the queſtion regarding the patting of butter, ſhe was firſt interrogated whether it was like the drawing of a cork, or rubbing or clapping on the cheek, or dabbling in water; and ſhe depones that it was not like theſe things. Nor was it, till an idea truly ſimilar to the reality was ſuggeſted, that ſhe deponed to the reſemblance. The reverſe of the petitioners obſervation is therefore juſt. The anſwers of the witneſs are the contrary of what a falſe witneſs, like all falſe witneſſes, particularly all young ones, willing to be led, would have made. The petitioners ſay, that the loudneſs reſembles nothing in nature, and nothing of the ſort the witneſs 'evidently wiſhes to deſcribe.' Now, the reſpondent has already obſerved, that there is nothing impoſſible or improbable in ſuch a noiſe exiſting in tribadiſm; and that there is no reaſon whatever for ſaying that the witneſs evidently wiſhed to deſcribe any thing more than the actual ſound ſhe heard. The reſpondent will only add, that ſhe can ſee no other account that can rationally be given of Miſs Cumming's deſcribing this noiſe, except this, that ſhe actually heard it. If ſhe had been inventing, ſhe had already mentioned circumſtances enough, and had

no occaſion whatever to embroil herſelf with this one, which ſhe herſelf, it is plain, could not diſtinctly account for, however intelligible it truly be. Her mention of it, in all its circumſtances, it is ſubmitted, is juſt the reverſe of indicating that deliberate perjury, of which the petitioners (from neceſſity) ſo boldly accuſe her.

But, ſay the petitioners, if there was any truth in it, it was natural to expect that, *from the importance ſhe attached to it*, it ſhould have made a prominent part of her ſtory at firſt, and yet ſhe did not mention it to Miſs Munro or any other perſon at ſchool. Your Lordſhips have ſeen, that ſhe did not attach any particular importance to it, though ſhe mentioned it along with the combination of circumſtances that indicated indecency. Your Lordſhips will obſerve, that when ſhe does ſo mention it, ſhe does not make it *prominent;* ſo far from it, that on the firſt interrogatory as to what were the circumſtances indicative to her of indecency? She did not mention it *at all;* and when ſhe did mention it on the ſecond interrogatory to that effect, it was only in and from its conjunction with another certainly moſt deciſive circumſtance. ‘ Interrogat-
State, p. 82. A. ‘ ed, and deſired to mention the circumſtance from which ſhe be-
‘ came certain that the purſuers were indecent together at that
‘ meeting? depones, That when Miſs Woods came into bed, ſhe
‘ felt them both take up their ſhifts, and ſhe felt Miſs Woods move
‘ and ſhake the bed, and Miſs Woods was breathing ſo high
‘ and ſo quick. Interrogated, depones, Miſs Woods was lying
‘ above Miſs Pirie at this time, and ſhe heard the ſame noiſe ſhe
‘ has already deſcribed; and ſhe thinks it was the ſame night ſhe
‘ heard Miſs Woods ſay, ‘ She would rather have ſomebody above
“ her.”

It is, therefore, extravagant in the higheſt degree in the petitioners to ſay, that the circumſtance of the witneſs not having mentioned this noiſe to Miſs Munro, connected with the account of it, is demonſtration that the whole is a *groſs and deliberate falſehood.* The reſpondent is confident that there never was a caſe but the preſent, where a party would have ventured to ſtate ſuch a concluſion from ſuch premiſes. But here, and againſt Miſs Cumming, all abſurd exaggeration is to be reaſonable.

Pet. p. 72. The next matter of fact, which the petitioners are pleaſed to ſay, admitted of, and required a particular deſcription, is, ‘ in what man-
‘ ner the witneſs felt the petitioners put down their hands, and
‘ pull

« pull up their ſhifts;' after that follows ' the *exact* poſition in ' which ſhe found the parties,' which the petitioners mingle with the other points in diſcuſſion, though they ſtate it in their *diviſion* as a ſeparate head. The reaſoning of the petitioners, on this point, is founded on the aſſumption of two general propoſitions with regard to teſtimony, which they are too ſkilful to ſtate directly or explicitly; and of which not the truth, but the falſehood is perfectly well known to every perſon at all acquainted either ſcientifically or practically with the nature of the operations of the human mind. The *firſt* propoſition of the petitioners is this,—*That if a witneſs ſays he perceived a thing or event to exiſt or happen, and yet is not able clearly to tell by what preciſe ſenſations he had this perception, then the witneſs muſt be wilfully perjured;* and the petitioners alſo aſſume, that though the *event* be of an *agitating* or diſtreſſing nature, powerfully attractive of attention; though the *ſenſations* conveying the perception be wholly *indifferent* in themſelves, and nowiſe attractive of attention; and though a conſiderable time has elapſed between the date of the event, and of the teſtimony; ſtill the rule is to be held good. This is one foundation of the petitioners' reaſoning on the points above mentioned, as will preſently be more fully ſhewn; but, in the firſt place, the reſpondent has to requeſt your Lordſhips attention to the manifeſt erroneouſneſs of this aſſumed axiom.

Dr Reid, in his Eſſay on the operation of the Mind, remarks, Reid's Eſſays, p. 62.

' The operations of the mind, from their very nature, lead the ' mind to give its attention to ſome other object. *Our ſenſations, ' as will be ſhewn afterwards, are natural ſigns, and turn our attention to the thing ſignified by them;* ſo much, that moſt of them, ' and thoſe the moſt frequent and familiar, have no name in any ' language. In perception, memory, judgment, imagination and ' reaſoning, there is an object diſtinct from the operation itſelf; ' and, while we are led by a ſtrong impulſe to attend to the ob' ject, the operation eſcapes our notice. Our paſſions, affections, ' and all our active powers, have, in like manner, their objects ' which engroſs our attention, and divert it from the paſſion it' ſelf.'

The reſpondent might quote more to the ſame purpoſe, but the thing is evident in itſelf. 'Thoſe particular *ſenſations* by which the perception of things or events are conveyed to the mind, when 'hey are not accompanied with pleaſure or pain in themſelves, are very

very ſeldom diſtinctly remembered. The mind having got the perception, no longer attends to thoſe ſteps that formed the means of acquiring it. But this applies with double force, when not only the intermediate ſenſations are indifferent, but the perception which they give is *interesting*, and moſt particularly, when it is *painfully* intereſting. The mind is then inſtantly, powerfully and completely attracted and occupied with the perception, and neglects the preliminary ſenſations. It is perfectly certain, therefore, that the firſt aſſumed maxim or axiom of the petitioners is falſe.

All theſe conſiderations acquire additional force when the witneſs is young, and when the time of recollection is diſtant.

The *second maxim* which the petitioners in like manner falſely aſſume is this, *That if a witness, not having in fact a distinct or certain recollection of the sensations by which he acquired a perception, shall, when strongly pressed, give an account of such sensations which is not perfectly distinct, clear and satisfactory, then such witness must necessarily be wilfuly perjured;* and further, that the maxim holds, even although the witneſs be a young girl, wholly inexperienced in judicial proceedings. Now, as to this, it ſeems to the reſpondent that the enunciation of it is quite ſufficient to ſatisfy every body that it is completely erroneous. The moſt unqueſtionably veracious witneſſes, when ſo preſſed, are perfectly liable to get into confuſion, in endeavouring to exert a recollection that is beyond their power; and as for young perſons, the reſpondent is confident there is hardly one who ever could wholly eſcape, if expoſed to it. Such a recollection, of neceſſity, operates in a great degree by *reasoning*, and can operate in no other way in any witneſs. The witneſs ſays (inwardly), 'I certainly perceived the thing,—how did I perceive it?' and then, being very deſirous of doing, what is conceived to be deſired by the Court, and thinking over and over the matter, in a ſort of agony of recollection, is quite apt to confound together concluſions of reaſon, and direct memorial aſſociations, and at laſt probably mentions what occurs to his mind, though ſure to be a partial and imperfect account of what in accuracy and fulneſs is beyond remembrance. This ſecond maxim of the petitioners is, therefore, as fallacious as the firſt.

On theſe maxims, however, depend all the remarks which are contained under the two heads above mentioned of the petition; and the reſpondent is confident, that, even if ſhe were to decline

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the irkſome labour of anſwering in detail all thoſe, as they ſeem to her, exaggerated and cavilling objections, nevertheleſs they would produce no ſerious impreſſion on your Lordſhips mind.

But the reſpondent is willing to follow the petitioners articulately, and has no doubt that, one after another, all theſe objections may be formally removed; and that, even if the general maxims of the petitioners were as true as they are falſe, it would not avail them in this caſe.

In the *firſt* place, With regard to the pulling up of the ſhifts, the petitioners quote the queſtion put to Miſs Cumming. 'Interrogated, As it was dark at the time, in what manner did ſhe feel 'them both put down their hands and lift up their ſhifts?' They then proceed: 'It is impoſſible that a plainer queſtion could be 'aſked; and, with ſubmiſſion, if the fact was not abſolutely falſe, Miſs 'Cumming *muſt* have been able to anſwer it *inſtantly*. The fact 'had been aſſerted, at leaſt as to Miſs Pirie, in all the previous 'proceedings; and Miſs Cumming muſt have had a preciſe notion 'concerning the manner of it, if there was the leaſt truth in it. 'But your Lordſhips will particularly obſerve, *that ſhe was quite 'aware of this.* She ſaw the neceſſity of the manner being ſpecified. She did *not* anſwer here, that *ſhe did not remember, or that 'ſhe was not ſure.* Nothing like it. Then, how did ſhe deal with 'the queſtion? *She ſat in profound ſilence for nearly a quarter of an 'hour*, during which the Court were taking all poſſible pains to 'explain, if it had been neceſſary, the preciſe object of the queſtion. Then, why was ſhe ſilent? For no conceivable reaſon, 'but becauſe the queſtion came on her unexpectedly, and *ſhe had 'not yet* contrived *the manner* in which ſhe was to repreſent the 'fact.' Pet. p. 74.

Here your Lordſhips ſee the moſt violent application of the firſt maxim. The pulling up of the ſhifts, your Lordſhips will obſerve, was only *one* circumſtance among many. It was, however, of ſuch a nature, as in itſelf powerfully to attract the attention of the witneſs, and to be itſelf well remembered. On the other hand, it was of ſuch a nature, that it certainly was exceedingly probable, if it was done, the witneſs would perceive it, as the parties were lying cloſe at her ſide in the ſame bed. It was, however, not leſs evident, that the preciſe ſenſations of touch, by which this fact was perceived, were very likely not to be accurately remembered. They were totally indifferent in themſelves,

themſelves, and the attention of the witneſs could not dwell upon them for a moment. They were probably faint and vague, not making any ſtrong impreſſion on any part of the body. On the other hand, the fact, of which they conveyed the knowledge, was ſtrongly, though diſagreeably attractive of attention, and was followed by other events of the ſame nature. It appears to the reſpondent plain, that a witneſs lying in the dark, cloſe upon two other perſons in the ſame bed, might perceive with certainty, that they were performing ſuch an operation as that now in diſcuſſion, and yet might not be able to give any account of the preciſe ſenſations by which that perception was acquired. Even if the witneſs had been unable to give any ſuch account, it is ſubmitted, that it could never have appeared for a moment to juſtify a concluſion of total falſehood and wilful perjury. And when it is further conſidered, that the witneſs is a young girl, and that five months had elapſed from the date of the event in queſtion; this obſervation acquires great ſtrength.

Accordingly it is no doubt true, true, that when the witneſs was deſired, by the queſtion above quoted, to give an account of the manner in which ſhe felt the lifting up of the ſhifts, *i. e.* the preciſe ſenſations, by means of which ſhe perceived that event, ſhe was much at a loſs. She was, as in all other inſtances, and as all young witneſſes always are, deſirous of anſwering the queſtion put, and yet her recollection did not readily enable her to do ſo. She remained therefore for ſome minutes, (not a quarter of an hour, as is with the uſual exaggeration aſſerted) in ſilence, ſtraining her memory for what in truth it was perfectly natural ſhe could not remember at all, and next to impoſſible ſhe ſhould quite fully remember. This is the fair and natural account of the matter. Her ſilence was a ſevere and diſtreſsful effort of recollection. The petitioners knew this well; but they affect to ſay, it was a pauſe for *invention*. And why do they ſay this? Juſt becauſe they uniformly *aſſume, that every thing is to be presumed in favour of their accusation of wilful perjury*. Having preſumed malignity, having preſumed profligacy in a young girl of ſixteen, who never had done harm to human being, nor exhibited the leaſt ſign of depravity; they preſume *invention*, becauſe, in a ſituation where the witneſs was puſhed beyond her recollection, ſhe took time to recollect. But the reſpondent is confident, your Lordſhips will

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not adopt preſumptions ſo directly in the face of all law, juſtice and humanity. In truth, if the witneſs had uſed invention, ſhe would have had no occaſion for a long ſilence. A moment, as is uſual in all ſuch caſes, might have furniſhed her with an anſwer. But a moment was not ſufficient for ſo difficult an exertion of mind, as was neceſſary for anſwering the queſtion with a regard to truth.

The petitioners having attempted, on their firſt aſſumed maxim, to prove the witneſs wilfully perjured, becauſe ſhe took time for recollection, next proceed upon their ſecond, to ſhew, that the account ſhe did give proves her perjured, becauſe it was not clear and ſatisfactory. The reſpondent has already made general obſervations, to which ſhe refers your Lordſhips, and which would apply, though this young girl had really, when urged beyond her clear memory, got into confuſion and even contradiction on ſuch a ſubject. But it is eaſy to ſhew your Lordſhips, that it is not to the invention of the witneſs, or even her imperfection of memory, but to the art of the petitioners, that the paſſages quoted are indebted for that ſhew of confuſion which is thrown over them.

The firſt paſſage quoted by the petitioners is this: 'As it was dark at the time, in what manner did ſhe feel them both put down their hands, and pull up their ſhifts? After long ſilence, and being repeatedly queſtioned, the witneſs anſwered, with her leg. Interrogated, If, with her leg, ſhe felt both their hands? depones, She did not feel their hands. Interrogated, How then ſhe felt them take up their ſhifts? depones, She was lying quite cloſe to them, and felt quite well when they took up their ſhifts. Interrogated, Did ſhe diſtinctly feel them put down both their hands? depones, That her own arm was covered, and ſhe did not feel their hands, but felt them move their arms downwards; and with her leg ſhe felt their naked legs, and ſhe felt nothing naked higher up than their legs. Interrogated by Lord Meadowbank, Whether ſhe is poſitive ſhe felt the right arm of the one and the left of the other, both moved down in order to lift up their ſhifts? depones, That ſhe is not poſitive they did both move down their arms, but is poſitive they both lifted up their ſhifts; becauſe afterwards, ſhe felt both their naked legs with her leg, but ſhe felt no other part of their bodies naked, becauſe her own was covered. Interrogated, If ſhe had drawn up her' Pet. p. 75.

'her own ſhift, ſince her leg was naked? depones, She had not, 'but it had got up.'

On this the petitioners remark, 'There are not a few contra-'dictions even in that ſhort ſpace. Firſt, She felt both their 'arms move downwards, then ſhe is not poſitive that both were 'moved downwards. Firſt, She felt their arms move downwards, 'and then felt their naked legs. Then ſhe is only poſitive that 'they lifted up their ſhifts; becauſe afterwards, ſhe felt both 'their naked legs. So that having at firſt reſted on the moving 'of the arms, the fact was at laſt made to depend *exclusively* on 'her feeling with her leg. But leaving theſe matters, it is clear 'that ſhe fixed her certainty of having felt with her leg both the '*naked* legs of the petitioners, and ſwore in the moſt pointed 'terms, that ſhe felt *nothing naked above their* legs.'

Now, here the plain fact was, that the witneſs had a general recollection of perceiving, that the purſuers, who were lying one above the other, cloſe beſide her, did put down their arms and pull up their ſhifts, and by that means allowed their naked thighs to come into contact with her own. But, *firſt*, She did not diſtinctly recollect by what ſenſations ſhe knew that the arms moved downwards; and ſhe did not diſtinguiſh ſcientifically or metaphyſically, for that is the proper word, between what ſhe *felt directly* by immediate touch, and what ſhe certainly perceived in conſequence of that ſenſation. *Secondly*, She uſed the word *leg*, in the uſual boarding ſchool ſenſe, to expreſs both leg and *thigh*. Of both of theſe the petitioners have attempted to take a captious, and of the latter the reſpondent muſt ſay, a very groſs advantage.

1*ſt*, She did *not* ſay, firſt that ſhe felt *both* their arms move downward, and then that ſhe did not feel both. What ſhe ſaid was generally, that 'ſhe felt them move their arms downards, and 'with her leg felt their naked legs;' and then, when ſhe is queſtioned if ſhe *is positive* that ſhe felt the right arm of the one and the left arm of the other, ſhe ſays, 'that ſhe is not poſitive 'they did *both* move down their arms.' Now, in this there is no contradiction whatever. She might perfectly well have the perception generally of their arms going down, and yet not be poſitive as to feeling the right arm of one and the left arm of the other.

The next ſubſequent remark of the petitioners is founded on the ſame error, and requires no ſeparate anſwer. Indeed, it is *ex facie* quite frivolous.

But, *2dly*, As to the meaning of the word *leg*, that no doubt is of more importance; and here the reſpondent muſt ſay, ſhe hardly expected the petitioners would have attempted any thing ſo very deſperate, as to throw the evidence into confuſion, by refuſing to this word the interpretation which was manifeſtly put upon it by the witneſs at firſt, and was afterwards, upon an expreſs queſtion, clearly explained.

Your Lordſhips will obſerve, 1. That the witneſs was aſked if ſhe had drawn up her own ſhift, ſo that *her leg* was *naked*, 'and 'anſwered, that it had got up.' Now that, it is plain, is not applicable to the leg in common meaning, over which a girl's ſhift does not reach, but to the boarding-ſchool meaning.

2. The witneſs added of her own accord, at the concluſion of her depoſition, that Miſs Pirie had her ſtockings on that night, a fact, which, if ſhe had not mentioned, ſhe could not poſſibly imagine could be known, and thus manifeſtly ſhewed, that when ſhe uſed the words 'naked legs' of the petitioners, ſhe meant part of the thigh in regard to Miſs Pirie.

3. In like manner, ſhe ſays ſhe does not know whether Miſs Woods had on her ſtockings that night or not, which it is utterly impoſſible ſhe could have readily and freely ſaid, after deponing that ſhe felt Miſs Woods' naked leg, if ſhe had not clearly uſed 'leg' in the common boarding-ſchool ſenſe.

4. Your Lordſhips will recollect, that the counſel, at laſt, ſeeing that the petitioners were willing to have the witneſs miſunderſtood on this point, had her removed, and then ſtated explicitly and fairly the meaning which he diſtinctly ſaw ſhe put upon this word, and requeſted, that ſhe might be aſked what was her meaning for it. Accordingly, when ſhe returned, the queſtion was directly put, and ſhe immediately laid her hand on her thigh. Afterwards ſhe depones, 'That ſhe cannot tell what part of their 'legs ſhe felt naked, *but ſhe is certain it was above Miss Pirie's knee.*

On this point, therefore, there can be no doubt whatever; and in any cauſe but this, the reſpondent is confident, that the truth would readily have been admitted. When this, however, is explained, all the remarks contained in the 76th and 77th pages of the petition vaniſh at once; and the reſpondent only begs your Lordſhips to remember them, as they afford a ſpecimen of the kind of argument to which the petitioners found themſelves driven.

The petitioners next proceed to ſtate another puzzle, which ſtrictly belongs to the third head they had ſtated in the diviſion Pet. p. 77.

of this part of their argument, viz. the *exact* poſition in which the witneſs felt the petitioners. The very ſtating of this head ſeems to the reſpondent a ſufficient anſwer to it, and may ſatisfy your Lordſhips, it is to conſiſt of minute cavil, incapable of making ſerious impreſſion. To ſuppoſe that a witneſs is wilfully perjured, becauſe ſhe either could not give an *exact* account of a thing of this kind, or that, when preſſed to do it, and tormented with innumerable queſtions regarding it, ſhe had made anſwers that were confuſed, and even in ſome degree contradictory, ſeems to the reſpondent contrary to the eſtabliſhed rules by which the truth is drawn from teſtimony. After all, however the reſpondent thinks it not difficult to ſhew that there really is no contradiction in the depoſition on this point, nor any obſcurity that may not be cleared up when the cloud, in which the ingenuity of the petitioners' counſel has endeavoured to involve it, is removed.

The real fact deponed to by the witneſs, in ſo far as ſhe can recollect, for ſhe does not pretend to abſolutely certain recollection, and that is ſurely quite natural, ſeems very plainly to be this: Miſs Woods came into the bed and got above Miſs Pirie, *i. e.* her body directly above Miſs Pirie's; and in particular, her left thigh above the thigh of Miſs Pirie. They then drew up their ſhifts, and almoſt at the ſame moment, Miſs Pirie's leg moved out to the ſide, and the left leg and thigh of Miſs Woods came to ſink down more, ſo as to be partly above, partly within that of Miſs Pirie. The witneſs was lying cloſe to Miſs Pirie, half turned on her right ſide away from them, but with her left leg and thigh towards them, and next to them. In this poſition, which is eaſily conceived, the witneſs, with her thigh or leg about the knee, on the outſide, felt the thighs, or part of the thighs of both the petitioners, and felt theſe naked on feeling the ſhifts drawn up, the one thigh above the other. She immediately after felt Miſs Pirie's leg, with a ſtocking on, moved out to the ſide. Theſe ſeem to have been her ſenſations, in ſo far as it was poſſible for her to recollect them.

Pet. p. 77. & 78. The petitioners quote the paſſage. 'Interrogated, Whether, 'when Miſs Woods came into bed, and ſhe felt Miſs Pirie move 'out her leg towards the witneſs, as above deponed to, Miſs Woods 'was lying between Miſs Pirie's legs? depones, She does not know. 'Interrogated, When ſhe felt the leg both of Miſs Pirie and Miſs 'Woods, was the one leg lying directly above the other? depones, 'No;

'No; they were not when ſhe felt them. Interrogated, How 'then were the legs lying? depones, That ſhe is inclined to think, 'that Miſs Woods' leg was lying within Miſs Pirie's. Interroga-'ted, Whether then ſhe put her legs over Miſs Pirie's, ſo as to feel 'Miſs Woods'? depones, She did not; but ſhe is quite ſure ſhe 'felt both legs. Interrogated, In what manner was her own leg 'lying when ſhe felt both their legs? depones, She does not re-'member; but ſhe thinks ſhe was lying half turned on her right 'ſide, with her back towards them.'

The firſt obſervation the petitioners make on this part of Miſs Cumming's depoſition is, that perhaps the reſpondent may think that Miſs Cumming's changing her opinion as to believing Miſs Woods' leg to be within Miſs Pirie's is of no importance.

Now that is very true. The reſpondent does certainly think ſo, and has no doubt your Lordſhips think ſo too.

In the next place, the petitioners ſay, that the witneſs firſt ſaid that Miſs Woods' leg was above Miſs Pirie's, and then that it was not.

Now here, as in ſome ſubſequent obſervations, the petitioners take advantage of an ambiguity into which the witneſs naturally fell, or was led indeed by the queſtions, in the uſe of the word leg. It is uſed and underſtood by the witneſs, your Lordſhips will obſerve, to mean *the whole limb*, ſometimes the *limb generally*, ſometimes part of it, or the *part felt* by the witneſs. Thus, the witneſs is interrogated, 'When ſhe felt the leg both of Miſs Pirie and Miſs 'Woods, was the one leg lying directly above the other? depones, 'No; they were not when ſhe felt them. Interrogated, How then 'were the two legs lying? depones, That ſhe is inclined to think, 'that Miſs Woods' leg was lying within Miſs Pirie's.' Here it is plain, that the word *leg* muſt firſt have been underſtood as *part of the leg* which was felt, then the *whole leg*, which the witneſs did not think was lying above the other, then the *leg generally*, which ſhe was inclined to think was within that of Miſs Pirie. It is abſolutely impoſſible to ſuppoſe, that the witneſs could mean, that *the whole* of Miſs Woods' leg, *i. e.* leg and thigh, was within Miſs Pirie's, becauſe the thing was manifeſtly impoſſible, and becauſe ſhe ſays in the ſame breath, that though ſhe felt *both*, ſhe did not put her own leg over Miſs Pirie's to feel Miſs Woods.' The witneſs clearly meant, that ſhe inclined to think Miſs Woods' limb in general was within Miſs Pirie's, though the part the witneſs felt, *i. e.* part of Miſs Woods' thigh, was above Miſs Pirie's.

There

There is, therefore, no contradiction. The witneſs did not think the whole of Miſs Woods' leg was directly above Miſs Pirie's, ſhe rather thought Miſs Woods' limb generally was within Miſs Pirie's, yet ſhe felt part of Miſs Woods' thigh above Miſs Pirie's, without putting her own limb over to feel it.

The witneſs afterwards changes her opinion as to being inclined to think Miſs Woods' limb within Miſs Pirie's *at that time*, which, whether ſhe was right in, may perhaps be doubted, but it is of no moment. The material fact is, that there is no contradiction of the facts ſtated, however little ſurpriſing it would have been, if any witneſs ſo queſtioned had run into confuſion and contradiction.

Pet. p. 78. But, ſay the petitioners, 'ſhe had ſworn in her *ſecond* edition of 'the ſtory, that 'it was with the upper part of her own leg, and "the under part of her thigh, *about the knee*, that ſhe felt the na-"ked legs." 'And now ſhe tells your Lordſhips, that ſhe was 'half turned on her right ſide, with her back towards them, and her 'knee was conſequently the farthest removed from them, and yet ſhe 'in this poſition felt, *with her knee*, not only Miſs Pirie's leg, 'but Miſs Woods' leg within Miſs Pirie's. The defender may 'believe this if ſhe can; but it is a manifeſt impoſſibility; and 'to the end, this remains Miss Cumming's position when ſhe felt the 'legs!"

Now, as to there being a *ſecond* edition, there was *no* ſecond edition, as has already been ſhewn. As to the ſuppoſed impoſſibility, the reſpondent begs leave to remark, in the firſt place, that if there were any ſuch, and if that were indicative of invention and falſehood in the witneſs, it would be very ſingular; for your Lordſhips cannot fail to obſerve, that it could have been juſt as eaſy for Miſs Cumming, if ſhe did not regard truth, to have ſaid ſhe was lying in any other poſition. But the fact is, there is very plainly no impoſſibility in the matter; and this is juſt another inſtance, in which your Lordſhips will find, that the bold words and marks of admiration of the petitioners are uſed without the ſmalleſt real occaſion. The witneſs, though lying *partly* turned on her right ſide, might yet perfectly well touch the thighs of the petitioners with part of her own left leg and thigh about the knee, *i. e.* the *outside* part of that limb about the knee. Nay more, this would naturally be the part that would ſo touch them. The petitioners attempt to puzzle your Lordſhips, by ſuppoſing, that it muſt have been the *front* part, or the *knee-pan*. But that is juſt like their many other aſſumptions, wholly without foundation.

As

At the ſame time, is it impoſſible for a perſon lying partly on her back, partly on the right ſide, to turn even the front part of the leg and knee, ſo as to feel two other perſons lying on her left ſide? Your Lordſhips can eaſily conceive that to be done; but in this caſe there is no occaſion. The probability is, it was with the outſide part of her own leg and thigh, about the knee, that the witneſs felt the petitioners' thigh, in which there could be no difficulty whatever.

The next obſervation of the petitioners is, that the witneſs contradicts herſelf as to the time when Miſs Pirie put out her leg. They ſay ſhe firſt ſwore, That 'when Miſs Woods came into 'bed, Miſs Pirie put out her leg;' and then, that it was juſt at the time of taking up the ſhifts that this took place. Now, ſurely this is a moſt frivolous criticiſm. The witneſs, at the end of her ſecond day's depoſition, depones, 'with reference to what is deponed to on 'page 59. lines 29. and 30., That ſhe further recollects, that when 'Miſs Woods came into bed, Miſs Pirie moved her leg over to-'wards the witneſs, and that Miſs Pirie had on her ſtockings that 'night,' &c. Pet. p. 78.

Now, it is plain that the words, '*when Miss Woods came into the 'bed*,' do not refer to any particular point of time, but to the occaſion generally; and moreover, it is clear, that it was very ſoon after Miſs Woods came into the bed, that the pulling up of the ſhifts and moving of Miſs Pirie took place.

Then the petitioners ſay, that there is a contradiction, becauſe the witneſs ſays, that when ſhe felt Miſs Woods' leg, Miſs Woods was lying directly above Miſs Pirie, which, the petitioners obſerve, 'flatly contradicted her previous ſtatement, 'that Miſs Woods was *within Miss Pirie's legs*.' But your —— p. 79. Lordſhips will eaſily ſee the fallacy of this. Miſs Woods herſelf, *i. e.* her body generally, was directly above Miſs Pirie; but it did not follow that *every part* of her leg or limb was ſtrictly above that of Miſs Pirie. Accordingly the witneſs, after the paſſage quoted as to Miſs Pirie lying directly above, when interrogated, if Miſs Woods' *leg* was directly above Miſs Pirie's, anſwers, (underſtanding that to mean, as before, *the whole limb*), That ſhe felt all Miſs Pirie's leg, but only a part of Miſs Woods,' and ſhe thinks that was above the knee. Further, the witneſs never ſaid ſhe was ſure Miſs Woods was within Miſs' Pirie's legs, though ſhe was inclined to believe it.

Then, ſay the petitioners, 'follows another direct contradic- —— p. 79. 'tion: 'Interrogated, Was her (Miſs Woods') leg directly above "Miſs Pirie's; or how was it lying? depones, That ſhe felt *all*

" Miſs Pirie's leg, but only a part of Miſs Woods,' and ſhe thinks " it was *above the knee*. Interrogated, Was it only above the knee " that ſhe felt Miſs Woods' leg? depones, *That it was above the* " *knee that ſhe felt it*; and ſhe does not think that ſhe felt " any more." 'Recollect that ſhe had before expreſsly ſaid, " That ſhe *cannot tell what part* of their legs ſhe felt naked, but " ſhe is *certain* it was *above Miss Pirie's knee*, although ſhe is *not* " *certain* what part of Miſs Woods' leg ſhe felt." 'And yet ſhe 'now felt *all* Miſs Pirie's leg together, and ſhe *is* certain that it 'was *above Miss Woods' knee!*'

Now, here is the exaggeration of the petitioners. Your Lordſhips ſee, the witneſs does *not* ſay that *ſhe was certain* that it was above Miſs Woods' knee. She ſays, that '*ſhe thinks* it was above 'the knee;' and it is, when aſked if ſhe felt it *only* above the knee, that ſhe replies, repeating what ſhe had ſaid, 'That it was 'above the knee, and ſhe *did not think* ſhe had felt any more.' Now, this is very palpably different from ſaying, as the petitioners ſtate ſo emphatically, that 'ſhe *is certain* it was above Miſs 'Woods' knee!" and there is no inconſiſtency between this and the former paſſage, where ſhe ſaid, 'ſhe is not *certain* what part 'of Miſs Woods' leg ſhe felt.'

Then, as to Miſs Pirie's leg, the obſervation of the petitioners is equally groundleſs. The witneſs ſays, ſhe is certain the part of Miſs Pirie's leg *ſhe felt naked* was above the knee; and afterwards that ſhe felt all Miſs Pirie's leg; but your Lordſhips will recollect, that Miſs Pirie had on a ſtocking, ſo that in this there is no contradiction whatever.

Pet. p. 79. But ſtill further, ſay the petitioners, 'Interrogated, Did the 'witneſs 'feel any other part of Miſs Woods' leg than ſhe has juſt " mentioned, at any time after they pulled up their ſhifts? de- " pones, That ſhe did not; becauſe *immediately afterwards ſhe let* " *as far from them as ſhe could, and ſhe felt no more of them* till after " ſhe had aſked Miſs Pirie what was ſhaking the bed, and when " Miſs Pirie anſwered, 'Nothing;' ſhe then drew up her leg and " touched the witneſs.' And yet ſhe had juſt before ſaid, that 'it was after they had pulled up their ſhifts, that ſhe felt Miſs 'Pirie put out her leg, which, from the deſcription, muſt have 'been *half an hour* before ſhe ſpoke!"

In every view this is an erroneous criticiſm. The wit-
Pet. p. 78. neſs ſaid, 'that when Miſs Woods came into the bed, ſhe lay 'above Miſs Pirie, and then they took up their ſhifts, and it was

'*after*

'*after that* Miſs Pirie moved her leg toward the witneſs.' Now, if *after that*, in this paſſage, means *immediately after*, as the petitioners themſelves ſuppoſe, and it ſeems to the reſpondent rightly, then where is the inconſiſtency in what the witneſs ſays? She, immediately *after* the pulling up the ſhifts, felt Miſs Pirie's leg with the ſtocking put out to her ſide, and at the ſame time, *i. e. also* immediately after, ſhe lay over away from them, and felt them no more for ſome little time. Is this a contradiction to ſhew perjury? As to the *drawing up* the leg by Miſs Pirie, and touching the witneſs by doing that, there is no reaſon to ſuppoſe that that is the ſame with her *putting out* her leg. That is aſſumed without any reaſon by the petitioners. The interval between the one and the other is therefore of no moment; at the ſame time, it is a great exaggeration to ſay it was *half an hour*, as the petitioners do.

Having thus anſwered all theſe objections ſeparately, it is unneceſſary for the reſpondent to make any formal reply to the reiteration of them, in conjunction with what is contained on pages 79. and 80. of the petition. The reſpondent has ſhewn there was no impoſſibility, no contradiction, and may only farther repeat, that the fact of the ſtockings, ſo far from being brought out on detection of the witneſs, was voluntarily added by herſelf to her ſecond depoſition.

The petitioners next proceed to another objection, founded on a circumſtance truly of no importance whatever in itſelf, but which they exaggerate in the moſt palpable way. They ſay: Pet. p. 80.

'But even this does not complete the evidence of abſolute falſe-
'hood in this aſſertion about lifting up the ſhifts. For your
'Lordſhips will now be pleaſed to recollect the important fact
'which at laſt came out, at the very end of the *next day's* exa-
'mination. All this time, that your Lordſhips were attempting
'to inveſtigate the matter, on the ſuppoſition that there was no-
'thing but a ſhift in the way, Miſs Cumming knew that Miſs
'Pirie had not only her ſtockings on, but *a petticoat* and a *wrapper*,
'which covered her whole body. Throughout the whole of it
'theſe were never mentioned. Nothing but the ſhifts pulled up.
'But the petitioners humbly take it to be nothing leſs than di-
'rect evidence of a deliberate falſehood, that even an attempt
'was made to deſcribe the occurrence, without mentioning the
'bed-gown and petticoat. It is, with ſubmiſſion, quite impoſſible
'that any perſon could have told a ſtory at all, if it had been
'true,

'true, without mentioning theſe coverings, which were evidently 'more immediately under Miſs Cumming's obſervation than the 'ſhift could poſſibly be. And why were they not mentioned? 'Your Lordſhips ſee that they increaſe the improbability tenfold, 'and in truth render the whole ſtory abſurd. If two women 'were laid flat above one another, with long ſhifts, it was truly 'obſerved to be a phyſical impoſſibility that they could pull up 'their ſhifts without altering their poſition. But if one of them 'had, beſides her ſhift, a petticoat and a wrapper faſtened round 'her, it is in vain to ſpeak of it as a thing which any ingenuity 'could render practicable. And beſides, the wrapper and petticoat 'alone, laid aſide or drawn up in any way, would have come be-'tween Miſs Cumming and Miſs Pirie, and again rendered it 'impoſſible for her to feel the naked legs.'

Now, in the firſt place, the reſpondent might aſk, Where the evidence was, that upon that *particular night* Miſs Pirie had on either a wrapper or a petticoat at all? Though ſhe *usually* ſlept with them, it does not ſurely follow that ſhe had them on every night, and of courſe not that ſhe had them on the particular night in queſtion. But it is very little neceſſary for the reſpondent to inſiſt upon that. For ſuppoſing they were on, what were they?

The petitioners, to be ſure, are at no loſs. They ſay, 'a petti-'coat and wrapper, *which covered* her whole body;'—a petticoat and wrapper '*faſtened round her.*'

But theſe are groſs aſſumptions. There is not the ſmalleſt particle of evidence or probability that there was any thing more than a common ſhort under-petticoat, and a common open wrapper, hung looſe on the ſhoulders. In bed, of courſe, the wrapper would fall below Miſs Pirie; and if ſhe lay on her back, as it is certain ſhe did when Miſs Woods got above her, the wrapper lying below her would be altogether out of the way, ſuppoſing that ſhe had it on. As to the petticoat, if the ſhift was pulled up, that would come up along with it, or it may have been up before. At all events, it is plain that the witneſs could have no particular reaſon diſtinctly to attend to that. Neither it nor the wrapper could in the leaſt increaſe the difficulty of pulling up the ſhifts,—a difficulty which the petitioners exaggerate in the moſt abſurd manner. They impute, indeed, an obſervatiou of that nature to an Honourable Judge, for whom the reſpondent has perfect reſpect, but who, if he made ſuch, it is impoſſible for the reſpondent to doubt, muſt have allowed it haſtily to eſcape him. The manifeſt exaggeration of the petitioners remark conſiſts in ſuppoſing the petitioners to be

wrapped

wrapped up like mummies in their ſhifts, and then laid flat above one another, in which ſituation, to be ſure, they could not eaſily pull up their ſhifts. But how, in the name of wonder, could they ever have got into ſuch a poſition; or where does the witneſs even ſay or hint any ſuch thing? The thing is a perfect impoſſibility, and the witneſs never uttered a ſyllable to that effect. All ſhe ſays is, that they got one above the other, and then drew up their ſhifts: of courſe, it follows that their ſhifts were in ſome degree farther down than they wanted them to be, but ſurely not that they were ſtretched to the utmoſt, and wrapped tight about the petitioners. If they were only a certain way down, and in a looſe ſtate, there could be no difficulty whatever in pulling them up. The movement is perfectly poſſible, and quite natural to perſons acting as they did. As to the obſervation, that the wrapper or petticoat muſt have come between the witneſs and the petitioners, it is ſo manifeſtly erroneous, that it requires no anſwer. Nor is the obſervation better founded, that the witneſs could not have told the ſtory at all, if true, without mentioning theſe coverings. Your Lordſhips ſee, that when the exaggeration of the petitioners is removed, theſe things were perfectly unimportant to the main facts about which the witneſs was interrogated, and the witneſs had no occaſion to mention them till ſhe was particularly queſtioned, when ſhe immediately deponed to them. She could, your Lordſhips ſee, have no earthly reaſon for concealing them, ſince it is perfectly manifeſt, not only that if ſhe had been inventing a ſtory, ſhe could as eaſily have adopted them as not, but that in all that ſhe actually depones to there is nothing inconſiſtent with their exiſtence. Your Lordſhips ſee, that Miſs Munro, againſt whom the petitioners do not venture to allege perjury, equally omits any mention of Miſs Pirie's petticoat and wrapper.

The petitioners then ſay there are no conſequences to ſupport the witneſs's account, *i. e.* there was no mark on the bed. But, *1ſt*, It is not clear that there was any emiſſion: *2dly*, It is not clear that any emiſſion from women would make a mark on ſheets: *3dly*, It might not fall upon the ſheets, but upon the ſhifts of the parties, which might not be drawn away below: *4thly*, The witneſs might not obſerve it, though it had been on the ſheets, as it does not appear ſhe ever ſuſpected there would be, or examined to ſee if there was ſuch a thing.

As to the breathing high being obſerved by the witneſs only in Miſs Woods, not in Miſs Pirie, which the petitioners ſay could not be true, that ſeems perfectly free from any improbability what-

ever. Miſs Woods was the party exerciſing the triboadian labour, and therefore ſhe breathed high; Miſs Pirie lying below, and paſſive, did not. The petitioners ſay Miſs Pirie is ſtated as the party having the enjoyment; but why is that neceſſarily connected with breathing high? The reſpondent can ſee no reaſon for ſuch connection. And your Lordſhips will further obſerve, that if the breathing of one was very high, the other might breath *somewhat* ſtrongly, without being perceived. It is, however, one of the many aſſumptions of the petitioners, that Miſs Pirie was *exclusively* gratified. There is no reaſon to doubt that both felt gratification, though Miſs Pirie might be more bold and ardent in purſuit of it. The remark with regard to Miſs Munro obſerving *Miss Pirie* only breathing loud, falls with that upon which it is founded; but at the ſame time, the reſpondent cannot help remarking, *1ſt*, That there is no evidence whatever that Miſs Cumming ever told Miſs Munro that *one* of the parties in her bed breathed loud. *2dly*, That it has been already ſhewn, that Miſs Munro's obſervations on the firſt occaſion when ſhe heard the breathing, took place *before* Miſs Cumming had made any communication to her at all.

Pet. p. 85. The petitioners next proceed to remark upon the evidence of Miſs Cumming and Miſs Munro regarding the communications made to them by Charlotte the maid, and the hint by Miſs Cumming to Miſs Pirie.

The firſt of theſe ſubjects, your Lordſhips cannot fail to obſerve, is juſt one of thoſe points of this caſe on which it was moſt likely that the witneſſes, Miſs Munro and Miſs Cumming, without the ſmalleſt wilful falſehood in either, might fall into,—ſome diſcrepancy in the manner that the reſpondent has already ſhewn, the moſt unqueſtionably veracious witneſſes generally do, particularly in caſes of any conſiderable complexity. They were too much occupied with what they actually obſerved themſelves, to allow it to be certain that they ſhould remember, with perfect accuracy, all that Charlotte told ſhe had ſeen. Your Lordſhips will recollect, too, what it was that prevented this part of the ſubject from being cleared up, viz. the palpable, manifeſt and wilful perjury of Charlotte in favour of the petitioners, and the rejection of the evidence of Miſs Dunbar and Margaret Little upon objections made by the petitioners; and, attending to theſe things, your Lordſhips will judge with how good a grace the petitioners found upon obſcurities and apparent contradictions in regard to this matter, in order to impute wilful perjury to Miſs Cumming.

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The petitioners themſelves are unable to pretend, that on their ready ſuppoſition of perjury in Miſs Cumming, *they* can give any tolerably intelligible or probable account of this matter. That Charlotte *did* ſay that ſhe ſaw the petitioners in a ſituation of impropriety or ſuſpicion, through the key-hole, is quite undeniable, ſince, independently of the evidence of Miſs Cumming, it is proved, both by that of Miſs Munro, confirmed by that of Mary Brown, and of Miſs Stirling. That Charlotte ſaid this, is therefore perfectly certain; and there ſeems no reaſon to think ſhe would have ſaid it if it had not been true, becauſe ſhe could *then* have *no motive* for falſehood. Yet it ſeems clear that ſhe could not have ſeen them on the ſofa, as it ſtood at Drumſheugh, through the key-hole of the room, in the way Miſs Munro deſcribes her to have ſaid ſhe did; and Miſs Munro does not mention the account ſhe gave of ſeeing through the window. What then is to be thought of this? To the reſpondent, it appears that, in the abſence of certain information, from the cauſes above mentioned, it is however poſſible, with ſufficient probability, to conjecture what was the fact. State, p. 65. B. Vid. *ſupra*.

Though Miſs Cumming had never mentioned *to Charlotte* what ſhe obſerved till after ſhe mentioned it to Miſs Munro, it does not appear that Charlotte had not, previous to that time, made obſervations on the conduct of the petitioners *to Miss Cumming*. On the contrary, it appears that ſhe had made ſome ſuch obſervations even at Portobello. Charlotte, however, it appears, firſt mentioned this ſtory about the window to Miſs Cumming, when Miſs Cumming and Miſs Munro had been ſpeaking about the conduct of the petitioners, after the laſt time the petitioners had both been in Miſs Cumming's bed, and the firſt time they had been obſerved by Miſs Munro to be in her bed. The converſation of Charlotte on that occaſion appears to have been addreſſed to Miſs Cumming; and Miſs Munro, though ſhe had been preſent when Charlotte came into the ſchool-room, yet ſeems not to have heard it. She, probably, on Charlotte coming in, had gone to a different part of the ſchool-room, in that way which the conſciouſneſs of their having been ſpeaking of ſomething unpleaſant made quite natural. Miſs Munro was never queſtioned on this ſubject, as the counſel for the reſpondent were not ſufficiently aware of the ſtate of the fact. That Charlotte had noticed the conduct of the petitioners was mentioned, it would appear, by Miſs Cumming to Miſs Munro on this occaſion, probably juſt after this communication from Charlotte to Miſs Cumming, who, in conſequence, after the ſecond time

time ſhe was ſure the petitioners were in her bed, hinted the ſubject to Charlotte, who told her the ſtory of ſeeing the petitioners through the key-hole. This was told in *abſence of Miſs Cumming altogether*. In like manner, Charlotte told that ſtory to Miſs Cumming in abſence of Miſs Munro.

The condeſcendence for the reſpondent, in regard to this particular, was taken from the account given *by Miss Munro*, and very naturally; for your Lordſhips will obſerve, it is in the part of it relating to Miſs Munro where what Charlotte ſaid is mentioned.

Vide Art. 15.

Miſs Cumming never had given any account different from what is contained in her depoſition. That is a matter which, after the example of the petitioners' counſel, thoſe for the reſpondent may take the liberty of mentioning. The original ſtatement laid before counſel, before the cauſe was in Court, is ſtill in exiſtence, and could be authenticated on oath by three counſel and two agents; and that ſtatement bears, that Charlotte told Miſs Cumming that ſhe ſaw the petitioners through the window.

The petitioners, in order to convict Miſs Cumming of wilful perjury, as uſual, begin with various aſſumptions, calculated to infer that ſhe had a deſire to conceal or alter the words uſed by Charlotte.

1. They aſſume ſhe knew the ſtory Miſs Munro had ſtated Charlotte to have told her.

2. That ſhe knew the ſtate of the key-hole and ſofa at Drumſheugh, to which they aſſume Charlotte's ſtory muſt apply.

Pet. p. 86.

They then ſay, after quoting part of her evidence, 'Here the 'witneſs, in the firſt place, *ſuppreſſed the key-hole altogether*; and 'then ſhe invented a new ſtory, to render the idea of ſeeing them 'on the ſofa barely poſſible. She now connected the ſofa with 'the ſuppoſition of Charlotte ſeeing them from the outer ſtair, 'and ſhe evaded all explanation as to the mode of ſeeing them on 'the occaſion when both the doors were locked. It will be mat'ter of ſerious inquiry, whether the whole of this part of this 'ſtatement does not moſt clearly appear to be a deliberate falſe'hood.'

Now, in the *firſt* place, as to the two aſſumptions, they are both without one particle of evidence. As to the laſt, in particular, Miſs Cumming being 'Interrogated, Were you ever told that 'there was no key-hole to either of the doors of the drawing-'room? depones, No, ſhe does not think ſhe ever was. Interro'gated, Are there key-holes to the drawing-room door or not? 'depones, She does not know. Interrogated, Did you never ob'ſerve theſe doors after Charlotte told you the ſtory? depones 'No

State, p. 75.

No. Interrogated, Did you never think of examining how Charlotte could ſee through the key-hole of the drawing-room door? depones, No.' And this depoſition is nothing more than what the very circumſtances of the caſe themſelves demonſtrate. For on no ſuppoſition can it be ſuppoſed Miſs Cumming did know of the ſtate of the key-hole. If ſhe had invented the ſtory, as the petitioners aſſert, would ſhe not have been at the pains of *previously* looking at the ſubject of it? And if ſhe had not, then it is abſurd to ſuppoſe ſhe ſhould have perjured herſelf to conceal a ſtory in which ſhe was quite innocent. Then it is perfectly certain, that, in ſo far as relates to the examination of the key-hole, in the courſe of the proceedings, or any ſtatement regarding it, ſhe never could know any thing about it, ſince no communication whatever was made to her on that ſubject. There is therefore, in the firſt place, not the ſmalleſt reaſon for imputing to her that deſire of concealing or altering the words which Charlotte uſed, which the petitioners impute to her. It is merely gratuitous imputation, advanced only becauſe it ſeemed uſeful to the petitioners' argument, but without evidence, nay againſt evidence.

In the next place, there is juſt as little reaſon for ſaying, that the depoſition given by Miſs Cumming on this point, is in itſelf ſuſpicious in the ſmalleſt degree, though the petitioners, no doubt, think it quite clear that it is a deliberate falſehood.

Miſs Cumming does not ſay that Miſs Munro heard what Charlotte ſaid upon that occaſion. Nor does Miſs Munro herſelf, when ſhe mentions Charlotte's telling about the key-hole, ſay, that this was upon the occaſion of which Miſs Cumming ſpeaks; ſo that there is no contradiction between theſe teſtimonies. And, laſtly, if Miſs Cumming had wilfully ſuppreſſed the key-hole, and invented another ſtory to put in its place, ſhe never would, immediately after mentioning that other ſtory, have inſtantly introduced the ſtory of the key-hole. Yet this is what your Lordſhips ſee ſhe does. She inſtantly proceeds, 'And another day,' &c. without heſitating a moment. It is manifeſt, that if ſhe had wiſhed to avoid the key-hole, and yet retain the ſeeing on the ſofa, and had therefore invented a ſtory to ſerve inſtead of that about the key-hole, ſhe would of courſe have *left out* that one altogether. The gratuitous imputations of the petitioners are not even conſiſtent with themſelves.

But farther, it is manifeſt, from what ſhe did mention of this ſecond ſtory which Charlotte told her, that her omiſſion of the key-hole could not poſſibly be a premeditated ſuppreſſion. For ſhe

 actually

actually mentions, that Charlotte went to *the doors and found them locked*, and then had some conversation, which she plainly meant was *through the door*, and *saw what they were doing*; i. e. also through the door, which could be no other way than by the key-hole. It is impossible to read this part of the deposition without distinctly perceiving that this is Miss Cumming's obvious meaning,—'And 'another day she went to the drawing-room, *and went to both the* 'doors, *but they were both locked*, and Miss Pirie said, 'Who's "there?' and Charlotte said, 'It is me;' and Miss Pirie said, "What do you want?' and Charlotte replied, 'I want to get in:' 'That Miss Pirie said, 'You must come back again, we're busy "just now;' and Charlotte said, '*She saw them quite well what they* "*were doing*." No witness, not even a child, artfully suppressing the story of the key-hole, could possibly give such an account as this.

Accordingly, what happens after Miss Cumming is asked how Charlotte said she saw them, when both doors were locked? She answers, without hesitation, 'That she had said she had seen them 'through the key-hole,' shewing clearly that she had no intention of suppressing this circumstance, or inventing any other story instead of it.

But, say the petitioners, when she was asked why she did not tell that Charlotte had seen them through the key-hole when last examined, she answered, 'that she forgot, and she thought she 'would be examined again,' which the petitioners very logically observe 'is a contradiction in terms,' and, of course, perjury. Was there ever a case but this, where such a cavil would have been gravely stated to shew perjury? Surely it is very little necessary to say that it is plain the witness meant that she forgot *at first* and *afterwards* thought she would be examined again. But the respondent cannot enlarge upon such a point.

Pet. p. 87. The petitioners then proceed to what they call 'an examination of the particulars of the two stories thus for the first time 'raised up.' The respondent has already said, that Miss Cumming had *not*, for the first time, mentioned this story on her examination, and that the assumption of the petitioners on this head is not only not proved, but certainly false.

The petitioners then quote part of Miss Cumming's deposition regarding the second occasion Charlotte mentioned, and then they add, 'Here your Lordships will remark, 1. That the witness has 'before sworn, that it was upon the day when she and Mrs 'Munro came in from her walk, that Charlotte made this com-

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'munication in the preſence of her and Miſs Munro; and yet ſhe 'now will not remember any thing, either of the time, place, or 'perſons preſent, or any thing connected with it. 2. That though 'the whole point of the ſtory had hitherto depended on the ſup-'poſed aſſertion of Charlotte, that after finding both doors lock-'ed ſhe ſaw them through the key-hole *upon the ſofa*, yet Miſs 'Cumming now ſwears peremptorily that Charlotte did *not* ſay 'ſhe ſaw them through the key-hole on the ſofa. 3. That though 'this ſtory has been told and retold, for the purpoſe of fixing 'criminality upon the petitioners, Miſs Cumming at laſt ſwears 'that Charlotte did not utter one word which could have that 'tendency, or any thing whatever, but *the ſimple impoſſibility* that 'ſhe ſaw them through the key-hole, which did not exiſt. Your 'Lordſhips will remark alſo, in paſſing, that here ſhe is in flat 'contradiction with Miſs Munro, and with all the previous ſtate-'ments in the cauſe.'

Now, on this, the reſpondent muſt remark,

1. That the witneſs had *not* ſworn any ſuch thing, as it is ſaid in the firſt remark ſhe had done. The witneſs had ſaid, that Charlotte had told the ſtory about the window and *ſofa* immediately after ſhe had been ſpeaking to Miſs Munro, but ſhe had *not* ſaid that Miſs Munro had heard *that ſtory*, far leſs that Charlotte had told the ſtory *about the key-hole* in Miſs Munro's preſence.

The paſſage of her depoſition relating to this is above quoted, and on looking at it your Lordſhips will ſee, that it is plain that the witneſs does not depone that what Charlotte ſaid as to this *other day*, was ſaid on the ſame occaſion as what ſhe ſaid on the *firſt* day. The firſt remark, therefore, is inaccurate in every reſpect.

2. It is of no earthly conſequence to Miſs Cumming's veracity what had *hitherto* been regarded as *the point* of the ſtory, as it is certain that that ſtory was never told by Miſs Cumming in any other way than as contained in her depoſition.

3. It is mere ſophiſtry to ſay that what Charlotte had ſaid had no tendency to criminate the petitioners. For Miſs Cumming *had been talking to Charlotte about it*, *i. e.* about the improper conduct of the petitioners, when Charlotte told her ſhe had found the doors locked, and ſaw the petitioners through the key-hole what they were doing. Theſe words were vague, certainly, as words generally are, when parties ſpeak of what is already underſtood. But they were not unmeaning. To the reſpondent it ſeems that

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their want of particularity ſhews Miſs Cumming's veracity, not her invention and falſehood. And ſurely it will not be ſaid, or or at leaſt your Lordſhips will not think, that becauſe Miſs Cumming did not examine Charlotte as to the particulars, therefore ſhe muſt be perjured.

As to the *impossibility* of ſeeing through the key-hole, that is of no conſequence to Miſs Cumming's evidence, ſince, as has been already obſerved, whatever the fact has been, Charlotte did certainly ſay what Miſs Cumming has deponed to on that point. But further, the reſpondent has already obſerved, that there is no reaſon to ſuppoſe that the drawing-room which Charlotte alluded to when ſhe ſaid ſhe found the doors locked, and ſaw the petitioners through the key-hole, was the drawing-room at Drumſheugh. The probability is, from the deſcription incidentally
State, p. 84. 1. given of it, that it was the drawing-room at Portobello, ſo that this *impossibility* is altogether fallacious.

The petitioners next proceed to a criticiſm of the evidence of Miſs Cumming, regarding the firſt ſtory that Charlotte told her.

Pet. p. 85. The paſſage is as follows: But now ſee how Miſs Cumming's *amended* ſtory is particulariſed? 'Interrogated, Did Charlotte 'tell you what they were doing on the other occaſion when ſhe 'ſaw them as ſhe was going up to the drawing-room? depones, 'That *Miss Munro* and *ſhe* were *ſpeaking about it* when Charlotte 'came into the room, and Charlotte ſaid ſhe had ſeen them doing 'the ſame, and *that was all.* Interrogated, Was this at the ſame 'time when ſhe mentioned the ſtory of the key-hole? depones, 'She *does not remember.* Interrogated, What were you and Miſs 'Munro ſpeaking of? depones, They were ſpeaking of what had 'happened the night before. Interrogated, What did Miſs Munro 'or you ſay in Charlotte's hearing before ſhe ſpoke to you? depones, *She does not remember.* Interrogated, Where did Charlotte 'ſay ſhe was when ſhe ſaw them in coming up to the drawing-'room? depones, She ſaid ſhe was *on the outer ſtair* when ſhe ſaw 'them lying on the ſofa. Interrogated, What did Charlotte ſay 'they were doing on the ſofa? depones, They were talking of 'what had happened the night before when Charlotte came into 'the room, and as Charlotte *ſeemed to know it*, they did not ſtop, 'and ſhe ſaid they were doing the ſame on the ſofa. Interrogated. 'Did Charlotte ſay that their dreſs was in diſorder when they were 'on the ſofa? depones, *No.* Interrogated, Did ſhe ſay that they were 'kiſſing? depones, No. Interrogated, Did ſhe ſay that the one 'was lying above the other? depones, *No.*'

On

On this the petitioners remark, 'Need the petitioners point out 'to your Lordſhips the groſs contradictions and the groſs proofs of 'direct falſehood contained in this ſtatement? Is it not enough 'that ſhe expreſsly makes Miſs Munro to have been preſent at this 'converſation? And yet Miſs Munro moſt expreſsly connects the 'ſeeing through the key-hole and the ſeeing upon the ſofa toge-'ther, and never ſpeaks one word of the outer ſtaircaſe, or even 'ſuppoſes that there was two ſtairs inſtead of one. This is ſuffi-'ciently remarkable; and as it is humbly thought your Lordſhips 'muſt determine whether you will believe this ſtatement or not, 'and that you cannot believe it, it is ſubmitted, whether there is not 'the moſt convincing evidence, that Miſs Cumming having in 'ſome way or other recollected or diſcovered that there were no 'key-holes, and that the ſofa could not be ſeen in that manner, 'had juſt invented the new ſtory of the ſtaircaſe to remove the 'difficulty.

'And what is the inference from this, but that the whole ſtory 'of the key-hole and the ſofa was the original invention of Miſs 'Cumming, though it was ſo managed as to make Miſs Munro 'think that it came from Charlotte?'

The reſpondent has already explained this. Miſs Munro mentions a ſtory told by Charlotte about the key-hole, at which ſhe ſays Miſs Cumming was *not* preſent, ſo far as ſhe recollects, and does not make any mention of the other ſtory about the window, at which Miſs Cumming was preſent.

Now, as Miſs Munro was never queſtioned about the latter ſtory, it is plain, that her evidence never could be regarded as contradicting Miſs Cumming on this point. But further, it has already been obſerved, that it might very naturally happen, that ſhe might not hear that ſtory though ſhe had been talking to Miſs Cumming immediately before Charlotte came in, and that Miſs Cumming did not ſay the contrary, nor was particularly queſtioned on that ſubject. The reſpondent muſt repeat, that it is nothing leſs than a groſs abſurdity to ſuppoſe, that Miſs Cumming ſhould invent the ſtory about the window, in order to remove the difficulty about the key-hole; and yet immediately afterwards mention that very ſtory about the key-hole as a diſtinct ſtory, and make Charlotte to ſay, that ſhe came to the door, and through that ſaw the petitioners, evidently alluding to her ſeeing through the key-hole.

As to the laſt obſervation of the petitioners, it certainly does ſeem to the reſpondent an utter impoſſibility, that Miſs Cumming ever could have made Miſs Munro believe that Charlotte had told

her what Miſs Munro ſwears ſhe did, unleſs it had really happened that Charlotte did ſay ſo. That Miſs Cumming ſhould have put the ſtory into Charlotte's *head*, ſo as to make her tell it as a thing ſhe had ſeen herſelf, is an equal impoſſibility. If ſuch an extravagant refinement of artifice had been attempted, it is perfectly impoſſible it could for a moment have eſcaped detection by Miſs Munro. And beſides, if that had been the caſe, why did not Charlotte ſay ſo? That ſhe favoured the petitioners was manifeſt. She certainly perjured herſelf in their favour, yet ſhe did not dare to ſay that Miſs Cumming had put any ſtory whatever into her head.

The petitioners next proceed: 'But the moſt curious thing is, 'that in Miſs Cumming's own account of the matter, there is truly 'evidence to confirm this as the fact. For your Lordſhips will 'obſerve, that neither in the one caſe nor in the other will ſhe fix 'upon any one circumſtance whatever to give the ſtory coherence. 'She will fix upon *nothing that Charlotte said ſhe ſaw*. Not 'that they were lying on the ſofa: not that they were kiſſing: 'not that they were above one another: not that their clothes 'were in diſorder: not that they were embracing. In ſhort, ab'ſolutely nothing. Neither will ſhe fix upon one word that either 'ſhe or Miſs Munro *had ſpoken* by which Charlotte could have un'derſtood what they were ſpeaking about: She *does not remember*: '*They were ſpeaking about it*: Charlotte *underſtood*: Charlotte has 'ſeen the *ſame*, &c. Theſe are all the anſwers your Lordſhips 'can get from her. In ſhort, at laſt the converſation comes to 'amount to nothing.'

Miſs Cumming ſays, that Charlotte having overheard them ſpeaking of the improper conduct of the petitioners, mentioned, that ſhe through the window had ſeen the petitioners lying together on the ſofa. That is all Miſs Cumming ſays certainly; and the petitioners may argue upon the import of it as much they pleaſe. But is it not perfectly unreaſonable in them to pretend to make Miſs Cumming perjured, becauſe ſhe will not make Charlotte ſay more? The petitioners are inaccurate, however, when they ſay, that the witneſs does not make Charlotte ſay ſhe ſaw them on the ſofa, for ſhe does expreſsly ſay that; and, with great ſubmiſſion, when ſhe ſaid *that*, in connection with the previous obſervation of Charlotte on the interview between Miſs Cumming and Miſs Munro, the import of her expreſſions was abundantly obvious, and ſuch as to require very little interpretation. That Miſs Cumming ſhould not, after the lapſe of ſo

conſiderable

conſiderable a time, remember the preciſe words they had ſpoken before Charlotte ſaid this, is perfectly natural, and can furniſh no ground of objection that is in the leaſt reaſonable. The reſpondent has already anſwered the extravagant ſuppoſition, that Miſs Cumming, had ſhe been ever ſo deſirous, (of which there is not the leaſt evidence, as has formerly been ſhewn,) could have made Miſs Munro believe that Charlotte had told her what Miſs Munro depones Charlotte did tell, unleſs it had been true. Your Lordſhips will obſerve, that Miſs Munro ſays *Miss Cumming was not present at the time* ſhe recollected Charlotte telling the ſtory about the keyhole to her, ſo that there is not the leaſt room for any ſuch ſuppoſition. Indeed, the reſpondent has to apologiſe for waſting your Lordſhips' time in anſwering ſo ſtrange a ſuppoſition; but what is it the petitioners will not ſuppoſe, in order to make it appear that Miſs Cumming is wilfully perjured?

The petitioners then ſtate, 'that, *de facto*, Miſs Cumming did 'pretend to have had converſations with Charlotte which ſhe never 'had;' and to ſhew this, they ſay, 'Miſs Cumming has ſworn in 'the moſt poſitive terms, that ſhe never did ſpeak to any perſon 'whatever on the ſubject of the ſuppoſed indecencies of the petitioners, till ſhe ſpoke of it to Miſs Munro on the morning after 'her laſt occaſion, when ſhe had become ſure. 'Depones, That "ſhe never ſpoke of it to any body till after ſhe was ſure;' and 'again, 'that ſhe *first* mentioned it to Miſs Munro, and *ſhe was "the first person the witness ever mentioned it to.*' And once more, "That the ſame morning ſhe had the converſation with Miſs Mun"ro in the front garden, they returned into the houſe, and conti"nued the converſation when the maid came in; and *if the maid "had not appeared to understand* what they were talking about, ſhe "*would never* have mentioned it to the maid at all; and ſhe had "not mentioned it to the maid before.' And this is poſitively re'peated in ſeveral other parts of the depoſition, particularly p. 86. 'G., 'That ſhe never mentioned it to *any person* till ſhe did ſo *to* "*Miss Munro* in the front garden.' The petitioners muſt aſk the 'defender whether this is true or falſe? If it be falſe, it is a moſt 'deliberate falſehood, and the petitioners care little what elſe may 'be contained in Miſs Cumming's depoſition. If it be true, as the 'defender muſt ſay it is, your Lordſhips will attend to the conſe'quence. Pet. p. 90.

'Miſs Munro, upon recollecting the time when ſhe waked in a "fright before either of her two occaſions, 'depones, That ſhe "did mention that circumſtance to Miſs Cumming; and it was

"*upon*

" *upon that* occaſion Miſs Cumming told her ſhe had been accuſ
" tomed to be ſo diſturbed; *and that ſhe at the ſame time added,*
" *that Charlotte the maid had told her Miss Cumming, that ſhe had no-*
" *ticed the behaviour of the purſuers.*' Here is the very *firſt* con-
' verſation which Miſs Munro had with Miſs Cumming; and it is
' fixed to be the very morning after Miſs Cumming's *laſt* occaſion.
' And yet though Miſs Cumming ſwears poſitively that ſhe had
' never before ſpoken to any perſon, and moſt expreſsly, that ſhe
' had *not before ſpoken to Charlotte*, it is diſtinctly proved, that ſhe
' then told Miſs Munro that Charlotte had obſerved the conduct of
' the petitioners. Thus, as it is clear the accuſation itſelf origi-
' nated with Miſs Cumming, ſo theſe pretended converſations of
' Charlotte are traced, directly to Miſs Cumming as the ſource of
' them; and ſhe is proved, *by direct evidence out of her own mouth, to*
' *have absolutely invented them.*'

In anſwer to this, the reſpondent has to requeſt, that your Lordſhips will recollect the obſervations already made by the reſpondent upon the different obſervations and converſations of Miſs Cumming and Miſs Munro. The reſpondent, referring to theſe, will only here remark, that Miſs Cumming cannot be pretended to ſhew the ſmalleſt anxiety to make Miſs Munro firſt mention the behaviour of the petitioners to her. On the contrary, ſhe depones that ſhe herſelf mentioned what ſhe had ſeen to Miſs Munro on their firſt interview on the ſubject. On that occaſion Charlotte came in, and overheard part of what they ſaid, and Miſs Cumming depones that ſhe bade Miſs Munro hold her tongue, when Charlotte mentioned what ſhe (Charlotte) had ſeen through the window. Now, Miſs Cumming ſwears, that previous to this, ſhe had not mentioned the conduct of the petitioners to Charlotte, and where is the evidence that ſhe had done ſo, as the petitioners ſo loudly aver? There is no ſuch evidence. Miſs Munro certainly ſays, that on the occaſion when ſhe mentioned her firſt obſervation of the petitioners conduct, and of Miſs Pirie coming to her bed, Miſs Cumming told her that Charlotte had noticed their conduct. On this, the reſpondent might obſerve, that your Lordſhips have ſeen that Charlotte had noticed in ſome degree to Miſs Cumming the conduct of the petitioners even at Portobello. But beſides, your Lordſhips ſee, that it was in the middle of the very firſt conference of Miſs Munro and Miſs Cumming, that Charlotte did mention that circumſtance. Now, when the occaſion was on which Miſs Munro mentioned to Miſs Cumming her waking in a fright, has already been ſhewn. It has been ſhewn that it was the ſame time when Miſs Munro mentioned

the

the firſt occaſion of Miſs Pirie having been in her bed. As Charlotte had interrupted that interview, and ſpoken to Miſs Cumming regarding the ſeeing through the window, the preſumption is, that immediately afterwards, Miſs Cumming mentioned to Miſs Munro, ‘ that Charlotte had obſerved the conduct of the purſuers ;’ and Miſs Munro naturally ſays, that it was upon that occaſion Miſs Cumming did ſo. On this point, neither of the witneſſes were ſo queſtioned as to clear it up fully, but ſuch appears moſt likely to be the true account of it. The aſſertion of the petitioners that Miſs Cumming had told Miſs Munro of things ſaid by Charlotte, before Charlotte ſaid any thing, is therefore merely gratuitous, as it is in itſelf altogether incredible.

Theſe obſervations alſo afford a ſufficient anſwer to the other remarks contained in the 91ſt and 92d pages of the petition, in the pretended inconſiſtencies of the teſtimonies of Miſs Munro and Miſs Cumming, and the neceſſity of holding Miſs Cumming to have made falſe communications to Miſs Munro regarding Charlotte. Pet. p. 90, 91.

The petitioners repeat in theſe pages, the averment that Miſs Cumming ‘ leads Miſs Munro to make uſe of an expreſſion con- ‘ veying no meaning’ to Charlotte, and then ‘ interprets’ Charlotte’s anſwer.

The reſpondent muſt therefore again reply, that this averment is unfounded in every particular. Miſs Cumming did *not* dictate to Miſs Munro what ſhe ſhould ſay to Charlotte, or even adviſe her to ſpeak to Charlotte at all.

Miſs Cumming did *not* interpret Charlotte’s words to Miſs Munro, nor does it appear that Miſs Munro ever repeated theſe words at all to Miſs Cumming, who was not preſent when they were uſed by Charlotte to Miſs Munro.

In the cloſe of this article, the reſpondent has only again to requeſt your Lordſhips’ attention to the circumſtance, that it is proved beyond all poſſibility of doubt, that Charlotte did, with her own lips, make diſtinct communications indicating the indecent conduct of the petitioners, not only to Miſs Cumming, but to Miſs Munro and Miſs Stirling, and alſo, as appears by Miſs Munro’s teſtimony, to Miſs Dunbar ! (whom the petitioners ſucceſsfully objected to admitting as a witneſs, as they alſo did to Margaret Little, by whom the petitioners offered to prove ſimilar communications from Charlotte,) in ſuch a manner as to bid defiance to all the forced and deſperate gloſſes of the petitioners, who would have your Lordſhips to think, that there was nothing in the caſe but Miſs Cumming’s account of Charlotte having ſaid ſo.

The reſpondent has already adverted to this more particularly, and at preſent it is enough to repeat generally the fact, in order to ſatisfy your Lordſhips of the unfounded nature of the petitioners remarks on that part of Miſs Cumming's evidence, which relates to the communications of Charlotte. If Miſs Cumming had been a maliciouſly perjured inventrix on this point, Would it have come out by unqueſtionable evidence, that circumſtances fully as ſtrong as ſhe depones to were clearly true? Would none of the other perſons who communicated with Charlotte during ſo conſiderable a time, have detected her? The manifeſt perjury of Charlotte, too, will not be overlooked. If ſhe could have aſcribed what ſhe ſaid to Miſs Cumming, Would ſhe have perjured herſelf to conceal it? Aſſuredly not. In every point of view, then, the objections of the petitioners on this head are unſatisfactory, and in truth are juſt of that cavilling kind, which in every caſe of any extent of circumſtances, may always be made without any real foundation or juſt effect.

Pet. p. 93. The petitioners proceed, in page 93. and 94., to ſtate objections to the account given by Miſs Cumming and Miſs Munro, of the way in which they determined to hint, and did hint to Miſs Pirie that they were diſturbed in the night, &c.

Theſe objections, at the very utmoſt, could only come to this, that the witneſs had miſrecollected the time when that converſation with Miſs Pirie took place.

Now, ſuppoſing that had been the caſe, would there have been any thing at all ſurpriſing in ſuch a circumſtance? Is it to be ſuppoſed, that at the diſtance of five months, two girls are to give an account of converſations happening on various days, in ſuch a way as never to confound their dates, and even in ſome degree thoſe relations by which they endeavoured to fix comparative dates? The reſpondent is confident that your Lordſhips will not be of opinion ſuch diſcrepancy or confuſion could have any ſerious effect on the general credibility of the evidence.

But, further, the reſpondent cannot ſee that there is any diſcrepancy or impoſſibility in the matter, even in appearance. The day to which Miſs Cumming alludes, when they were reſolved to give the hint, ſeems to have been the firſt day ſhe mentioned the conduct of the petitioners to Miſs Munro, and Miſs Munro told her that ſhe too had perceived Miſs Pirie in Miſs Woods's bed. That was the day after Miſs Cumming had been tired by the diſturbance of Miſs Woods's nocturnal viſit to Miſs Pirie, and at that time Miſs Munro, though ſhe had not yet made her laſt obſervation,

obſervation, yet had perceived Miſs Pirie in her bed, and above Miſs Woods. It is ſaid indeed by the petitioners, that Miſs Munro decidedly ſpeaks of their coming to the reſolution to give this intimation after all her obſervations; but that is not ſaid any where by Miſs Munro, and certainly not in the paſſages quoted by the petitioners.

Neither is it true, that this ſhewed credulity in Miſs Munro; for after what ſhe had herſelf perceived, no great credulity was neceſſary for thinking that the conduct of the petitioners was exceedingly ſtrange, and worthy of animadverſion.

Your Lordſhips will obſerve, that on this occaſion, though Miſs Munro was preſent, it does not appear that ſhe took any part in the intimation to Miſs Pirie, and as ſhe had not on the firſt occaſion, when the petitioners were in her bed, given any reaſon to them to think ſhe was awake, there is nothing ſurpriſing in their ſtill continuing once more to renew their practices in her bed. On the next occaſion, however, the perception by the petitioners that ſhe was awake, and had certainly, or very probably obſerved them, freed her bed in future from ſuch viſits.

Before quitting the ſubject of this hint which Miſs Cumming gave to Miſs Pirie, the reſpondent begs leave to call your Lordſhips attention to the modeſt confidence which the petitioners reſt upon Miſs Pirie's aſſertion, that ſhe remembers no circumſtance which could miſlead Miſs Munro into believing that Miſs Cumming did give her a hint in the way that Miſs Cumming and Miſs Munro both ſwear, one that ſhe did, and the other that ſhe heard and ſaw Miſs Cumming do. The reſpondent is not ſorry for that declaration, which is a diſavowal of all attempt at explanation. The reſpondent is confident your Lordſhips will, however, not entertain the leaſt doubt of its truth, and if you ſhall think it true, then your Lordſhips are requeſted to obſerve,

1. That it is in its own nature very ſtrongly indicative of the guilt of the petitioners.

2. That Miſs Pirie dared not admit it, but has been guilty of a ſolemn falſehood in a deſperate attempt to conceal it.

3. That after this circumſtance ſo falſely denied, *all those nocturnal visits*, which had been ſo common and ſo *necessary*, by Miſs Woods to Miſs Pirie's bed, ceaſed.

4. That after the following occaſion, when Miſs Munro obſerved the petitioners, and *touched* Miſs Pirie to give her a ſimilar intimation, her nocturnal viſits to Miſs Woods's bed alſo ceaſed.

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Pet. p. 96. The petitioners ſay, 'that if they were innocent and acciden-
'tal occurrences naturally ariſing out of their ſituation, it was
'natural they ſhould not be repeated if the ſcholars were there-
'by diſturbed, and more particularly, as about the middle or end
'of October, their ſubject of difference was in a great meaſure
'ſettled. The fact, therefore, though it were true, ought to lead
'to no concluſion, becauſe it is at leaſt equally conſiſtent with the
'ſuppoſition of innocence.'

But the petitioners *have denied* altogether receiving any intimation that the ſcholars were diſturbed, except perhaps their falſe admiſſion of Miſs Cumming 'jumping out of bed,' which, in their way of telling it, was ſurely not of ſuch a nature as to debar them altogether from thoſe frequent nocturnal interviews which their daily occupation, they ſay, rendered ſo natural and neceſſary. They cannot therefore be allowed to ſay, that it is conſiſtent with innocence when they are detected in a falſe denial of it, nor is the excuſe they offer ſufficient, even if they had admitted the fact.

It is hardly neceſſary for the reſpondent to take any notice of the attempt of the petitioners to impute falſe and malignant invention to Miſs Cumming, on account of the evidence ſhe gives as to what was told her by Miſs Munro. In the firſt place, Miſs Cumming could not poſſibly be ignorant that Miſs Munro herſelf had been examined before her, and certainly if ſhe had been ever ſo much in love with invention, would never have wilfully given a falſe account of what ſhe muſt have known the Court were already in poſſeſſion of a true one.

But, in the ſecond place, it is plain, that the two accounts have no ſubſtantial difference whatever, but juſt ſuch a verbal one as is quite conſiſtent with perfect veracity. Miſs Munro herſelf, in giving an account of the thing to Miſs Cumming ſix months before, moſt likely uſed words different from thoſe of her depoſition before your Lordſhips, and not improbably more nearly reſembling thoſe of Miſs Cumming: But, at any rate, the difference is quite immaterial.

Having thus articulately gone over the numerous, but, as it appears to the reſpondent, very cavilling objections of the petitioners, the reſpondent need ſay little upon the concluſion in which they are ſummed up. The facts having been ſhewn to be fallacious, the aggregate muſt be void of all force. It is *not* proved or true that Miſs Cumming invents facts or colours falſely, or alters facts to ſuit any object, or that ſhe is guilty of wilful ſuppreſ-

ſion, or that ſhe has any ſuſpicious minuteneſs. The legal objections to her admiſſibility were rejected by your Lordſhips; and the reſpondent cannot help thinking, they are objections that no perſon in the ſituation of the petitioners would ever have condeſcended to uſe, if they had been innocent. The bitterneſs and keenneſs Miſs Cumming is accuſed of, was in truth nothing more than the agony of overſtrained recollection on a painful ſubject, ſtimulated by the unexampled ſeverity and enormous length of examination to which this young girl was ſubjected.

The petitioners ſay Miſs Cumming is entitled to no allowances, becauſe ſhe is received *cum nota*. The reſpondent does not well know what they call allowances; but ſhe cannot help thinking, that their having inflicted upon this young girl the miſery and misfortune of witneſſing their foul and deteſtable luſts, and then venturing to proſecute the reſpondent for diſcovering theſe, is not quite a ſufficient reaſon why all the rules of candour and common juſtice in her regard are to be thrown aſide, and all the raſhneſs of the looſeſt conjecture, and all the laviſh violence of unmeaſured language, to be exhauſted in heaping upon her accuſations of perjury and malice.

The common rules of reaſon and juſtice, regarding thoſe apparent difficulties into which any witneſs may be led, in the courſe of an examination continued day after day, and extended into a vaſt multitude of inquiries about matters in themſelves diſtreſſing, complex and intricate, theſe rules, it is manifeſt, can never be affected by the exiſtence of any previous objections to the admiſſibility of the witneſs. To maintain that, *merely* becauſe legal objections had been made to her *admissibility*, a young girl in ſuch a caſe, and under ſuch an examination, is, after being admitted, to have no allowances; that ſhe is to be called upon, under hazard of conviction of perjury, for a degree of apparent conſiſtency and accuracy, to which human nature, in ſuch circumſtances, is very ſeldom adequate, does certainly ſeem to the reſpondent as outrageous a propoſition as ever was ſubmitted to a court of juſtice.

The petitioners next proceed to make objections to the evidence of Miſs Munro. Of her, however, they find themſelves under the abſolute neceſſity of ſpeaking with more reſerve. To charge wilful perjury againſt *two* witneſſes, was quite deſperate, and too groſs to be even for a moment endured by your Lordſhips. They felt, that if they had directly ſtated ſuch a charge againſt Miſs Munro, your Lordſhips would at once throw down their argument Pet. p. 98.

with utter rejection and diſguſt. But then what were they to make of Miſs Munro's evidence, clear and deciſive as it is on all the material points of this cauſe. They determined to obfuſcate and cloud it if poſſible by vague charges of ſome ſort and degree of unfairneſs, and by arguing that ſhe was inſtructed and influenced by Miſs Cumming. They ſay 'Miſs Munro never dreamt of 'ſuch a thing till it was put into her head by Miſs Cumming, and 'then ſhe interprets the moſt equivocal circumſtances ſo as to ſuit 'this theory. She is ſeduced by Miſs Cumming—made to be-'lieve things that never took place,—frightened by the horrible 'nature of the myſtery, and tempted by the chance of getting 'rid of the ſchool, till ſhe is at laſt involved in a plot.'

Now, in the firſt place, it has been ſhewn, that Miſs Munro actually obſerved the petitioners in her bed on the firſt of the occaſions on which ſhe knew that one was lying above the other, before ſhe made any communication to Miſs Cumming at all.

In the ſecond place, when ſhe did make the communication Miſs Cumming did not frighten her with any horrible ſtory; for ſhe herſelf ſwears that it was from Mary Brown, ſhe firſt formed any idea of the guilt of the petitioners, or any horror attending it.

Indeed, Miſs Cumming herſelf only thought what they did extremely indecent, but did not know it was criminal.

The averments that Miſs Munro was *ſeduced and involved in a plot*, tempted with thoughts of leaving the ſchool, &c. are as unfounded as any thing that ever was laid before your Lordſhips. There is not a particle of evidence of any ſuch thing. Miſs Munro is a witneſs as much above all ſuſpicion as any one that ever came into a court of juſtice. The facts to which ſhe ſpeaks, ſhe diſtinctly depones to as the direct obſervations of her own ſenſes, of her own *touch*, and *hearing*, and *ſight*. They are facts perfectly concluſive, and of which the petitioners, with all their falſe and fraudulent pretences, can offer nothing like explanation, and which all the ingenuity, zeal, and unexampled and enormous perſeverance of their counſel, could not ſhake in the ſmalleſt degree. The reſpondent is entitled then to argue, that Miſs Munro's evidence, coupled with Mary Brown's, might be received, independently of Miſs Cumming's, as deciſive of this cauſe. At the ſame time, ſhe has already ſhewn your Lordſhips, that Miſs Cumming's evidence is perfectly free from thoſe groſs charges which the deſperate nature of their caſe drove the petitioners to make againſt her teſtimony.

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The minute objections made to Miſs Munro's evidence, are frivolous in the extreme.

They ſay, that ſhe depones it was 'the general opinion of 'the ſchool, that the purſuers careſſed and fondled each other 'more than was conſiſtent with ordinary female friendſhip. De- 'pones, That Miſs Cumming and Miſs Stirling had ſo expreſſed 'themſelves to the witneſs, and ſhe rather thinks the Miſs Dun- 'bars, but is not quite ſure; and ſhe does not recollect any others 'that did ſo.' They then ſay, that Miſs Stirling denies having been ſtruck 'with any thing more *warm* or improper in their 'manner than between other female friends.' They are obliged, however, to admit, that Miſs Munro herſelf had explained her own meaning to be, it was 'after their reconciliations that 'they particularly careſſed each other,' which clearly ſhews that Miſs Munro never meant to ſay more than the fact, that they did careſs each other more than was uſual for two women who were friends, and that this was generally thought in the ſchool. Pet. p. 99.

Now, is there any reaſon to doubt that ſuch was actually the caſe? Miſs Stirling, who had been deſired by her mother to diſcharge all memory of the buſineſs from her mind, and who evidently was far inferior in diſtinctneſs to Miſs Munro, and of recollection remarkably deficient, ſays, ſhe ſaw nothing 'more 'than became two friends,' nothing 'too warm or improper;' but here ſhe is giving her opinion as to *criminality*, which is a different thing from the ſimple fact, that they careſſed each other more than was uſual. Miſs Stirling refuſes to admit ſhe ſaw any thing *unbecoming*; but it does not follow, that there was not ſomething more than uſual. As to her having been one of the perſons who mentioned to Miſs Munro their opinion on this ſubject; ſuppoſing Miſs Munro had been miſtaken as to this, what could it ſignify? But it is more probable that Miſs Stirling did ſay ſomething to Miſs Munro about the careſſing of the petitioners, though ſhe may not have ſeen any thing that ſtruck her as more than becoming.

The objection of the petitioners regarding the intimation given to Miſs Pirie has been already anſwered, and the truth of that intimation ſufficiently demonſtrated. Still more evident is it, that in Miſs Munro's account of this there is nothing in the leaſt contradictory or ſuſpicious. The objection, that Miſs Munro ſays ſhe *thinks* they told it to Miſs Stirling, and that Miſs Stirling does not appear to have been told of it, is ſurely in itſelf ſuch as to need no anſwer. The fact is, Miſs Stirling was not queſtioned on the ſubject. Pet. p. 100.

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Pet. p. 100. The next objection is juſt of the ſame kind. They argue againſt Miſs Munro for ſaying that there *might have been* a private quarrel between Miſs Pirie and Miſs Woods, previous to the times when Miſs Pirie came to Miſs Woods' bed *but ſhe does not think there was*. They aſk, what title had ſhe to conclude that there was not? Now, ſurely, conſidering the way in which the quarrels manifeſted themſelves, Miſs Munro might moſt naturally think there was no quarrel, as ſhe had ſeen or heard nothing of it. It is ſaid, that Miſs Woods' letter of the 24th September, and the anſwer to it, ſhews there was a quarrel. But not to mention the uncertainty of the dates, the letter, at the utmoſt, does not prove any particular quarrel about that time, but only the general oppoſition of intereſts and wiſhes regarding Mrs Woods. The objection then ſeems frivolous in every way.

Pet. p. 101. The petitioners proceed to what they call the moſt remarkable proof that Miſs Munro was very uncandid, or her mind entirely ſubdued. They ſay that Miſs Munro, throughout the whole of her depoſition, ſuppreſſed the fact, that Miſs Pirie ſlept with a wrapper, petticoat and ſtockings.

The plain fact is, that Miſs Munro had never adverted particularly to the preciſe night-garb of Miſs Pirie.

Miſs Munro found Miſs Pirie in Miſs Woods' bed in the dead of night,—perceived her lying above Miſs Woods,—felt both their bodies at the ſame time. Theſe were the material facts. As to their dreſs ſhe is ſo far from being unfair, that ſhe is very cautious and anxious not to ſay more than ſhe knew. She depones, 'That 'during the time ſhe ſlept with Miſs Woods, Miſs Pirie oftener 'than once came into the bed; and the deponent *believes her* 'clothes were off, and that the one lay above the other, and that 'Miſs Pirie was uppermoſt.' Then ſhe depones what the petitioners have quoted; and again, 'Interrogated by Lord Boyle, 'depones, That upon the firſt occaſion, when ſhe felt the purſuers 'bodies one above the other, *ſhe thinks* they had nothing on but 'their ſhifts.'

State, p. 46. R. C.

p. 62.

Here your Lordſhips ſee, in the firſt place, that whether Miſs Pirie had on ſtockings, or an under-petticoat, or wrapper, or not, was totally immaterial; and, in the ſecond place, that Miſs Munro only ſays ſhe thinks they had on nothing but their ſhifts, without being at all more poſitive or decided on the ſubject than her obſervation enabled her to be.

The remarks made by the petitioners on their own admiſſions, corroborative of Miſs Munro's evidence, have already been anſwered

ſwered in a former part of this paper, to which it is ſufficient to refer.

The petitioners next attempt to found an argument on an alleged variety in the deſcription of the circumſtances obſerved by Miſs Munro and by Miſs Cumming.

They ſay, 'But now what is it that Miſs Munro tells? If the 'two occaſions deſcribed were interviews of unlawful paſſion, no 'two things can poſſibly be more different than the deſcription 'given by Miſs Munro and that given by Miſs Cumming. With 'Miſs Munro there is *no kiſſing,—no careſſing—no pulling up of 'ſhifts.—no laſcivious converſation,—no ſtrange noiſe!* And yet 'it is extremely remarkable that Miſs Cumming did attempt to ſay 'that Miſs 'Munro had heard *the noiſe.* For ſhe ſays, that in her "firſt converſation, Miſs Munro ſaid, that the other night Miſs "Pirie had been in Miſs Woods' bed, and *ſhe heard a curious noiſe,* "*and wondered, but did not know what it was.*' But in Miſs Mun-'ro's bed there is nothing of the ſort; nor is it even hinted at 'in her depoſition. Not one of the circumſtances deſcribed by 'Miſs Cummiug, from which alone her certainty of the indecency 'was drawn: Nothing at all, in ſhort, but the allegation that 'Miſs Pirie was in Miſs Woods' bed; that there was ſome motion 'of the bed, and that the witneſs believed Miſs Pirie to be above 'Miſs Woods.'

Now, in anſwer to this, your Lordſhips will obſerve,

1. That there is no reaſon to ſay that the petitioners, in their tribadian practices, ſhould always act preciſely in the ſame way, even when they were in the ſame bed. Miſs Cumming does not ſay they always did ſo in her bed. On the contrary, ſhe particularly mentions that ſhe ſometimes heard the peculiar noiſe, and ſometimes did not.

2. In particular, there is no reaſon to ſay that they muſt have proceeded exactly in the ſame way when Miſs Pirie came to Miſs Woods, as when Miſs Woods came to Miſs Pirie.

3. Miſs Munro does *not* ſay, that, in her bed, there was *no kiſſing, no careſſing, no pulling up of ſhifts, no laſcivious converſation, no ſtrange noiſe.* She ſays there was ſome converſation, which ſhe, being a little deaf, could not hear; (but which might have been laſcivious); that ſhe felt *their naked bodies,* which implies pulling up of ſhifts. As to kiſſing, that, too, might have been without her hearing it. And as to careſſing, Miſs Cumming ſays nothing about that in particular.

As to the *curious noise*, Miſs Cumming never ſaid that Miſs Munro deſcribed to her any *particular* noiſe, or any noiſe ſuch as that heard by herſelf on ſome occaſions. Miſs Munro only told her in general, that ſhe heard a curious noiſe, and ſurely the whiſperings of the petitioners, and ſhaking of the bed at that extraordinary hour, might moſt naturally have been ſo deſignated by Miſs Munro to Miſs Cumming. Your Lordſhips will afterwards ſee, that Mary Brown uſes a ſimilar expreſſion, in mentioning what Miſs Munro told her.

The laſt ſentences of the paſſage quoted, contains an aſſertion that is nothing leſs than in the very face and teeth of the evidence.

Miſs Munro not only alleges Miſs Pirie to have been in Miſs Woods' bed, and that ſhe perceived *ſome* motion of the bed, and *believed* Miſs Pirie to be above Miſs Woods; but ſhe certainly depones to Miſs Pirie having twice been there at dead of night, having *both times been lying above Miss Woods, and the petitioners in that situation, moving their bodies, breathing high, tossing the bed-clothes, shaking the bed, and this for a considerable time; her having felt, viz. on one occasion, their naked bodies, and actually been able to see their position on one occasion.* She then depones to a poſitive, but groſsly falſe denial at the time by the petitioners, that Miſs Pirie had been in the bed, *when she actually was in it;* and a falſe device to get the witneſs out of the way, decidedly indicating their ſenſe of ſomething improper. In ſhort, the petitioners may gloſs as they pleaſe, but the evidence is ſuch as to defy all ſuch attempts.

It is really uſeleſs to run over in anſwer the petty cavils which the petitioners make, to what they denominate the particulars of her evidence. The reſpondent entreats your Lordſhips to look over the evidence again, and they are confident all thoſe objections will vaniſh. It is perfectly plain that Miſs Munro, on both occaſions, gives quite as full and clear an account of her perceptions and ſenſations, as, in the circumſtances of the caſe, could be expected even from the moſt diſtinct witneſs of ſuch a tranſaction.

She ſtates the perceptions diſtinctly and poſitively, and when croſs-examined upon the ſenſations by which ſhe had thoſe perceptions, ſhe gives ſuch anſwers as are perfectly conſiſtent with her account of the perceptions, and are indeed much more clear than could have been expected from a witneſs of ſuch an age, if not more than uſually intelligent.

It

It is quite erroneous to ſay there was any wavering in her evidence. Regarding her ſenſations or means of perception on the firſt occaſion, ſhe ſays, 'That ſhe did not know which of them was uppermoſt the firſt time. And being interrogated, How in the dark ſhe came to know that one of them was lying above the other, more than by the ſide of the other? depones, That her reaſon was, that ſhe could not get the clothes kept upon her. And being aſked, Whether ſhe wiſhed it to be underſtood, that ſhe had not formed her opinion of the one being above the other, from having in any degree actually felt them in that ſituation? depones, *No; on the contrary, ſhe partly formed her opinion, from having felt them, as they were lying close to her, and ſhe thought at the time, and thinks ſtill, that ſhe felt both their bodies at the ſame time.* Interrogated, What was the firſt thing ſhe perceived when ſhe awoke; whether the purſuers ſo lying above each other, or whether it was their whiſpers which ſhe heard? depones, It was the whiſpers which ſhe heard firſt, but they were then lying above one another. Depones, That the whiſpers were not ſuch as to enable her to diſtinguiſh the one voice from the other. Being interrogated, As ſhe could not diſtinguiſh the voice of Miſs Pirie from the voice of Miſs Woods, how ſhe came to diſtinguiſh that it was the voice of Miſs Pirie at all? depones, Becauſe ſhe could not think it could be any body elſe, and of courſe ſhe could not have been certain it was Miſs Pirie, if ſhe had not ſpoken to her afterwards, before ſhe quitted the room.' State, p. 61. D.

The *ſuppoſition* of the petitioners, that Miſs Pirie might, even on this firſt occaſion, have ſat down or reclined on the ſide of the bed, is too manifeſtly incapable of accounting for this teſtimony, to require any remark. Your Lordſhips will obſerve, too, that this is a *ſuppoſition* by the petitioners, who, if it had been true, muſt have ſtated it as a *fact* which they have never ventured to do. Your Lordſhips will remember the remarks already made by the reſpondent on the averments and admiſſions of the petitioners.

As to the witneſs not being certain that Miſs Pirie's legs were *in bed* the firſt time, it is plain that this is nothing more than Miſs Munro's ſcrupuloſity in ſwearing, that this particular part of the body was in bed, when ſhe had not felt it there. But ſhe ſays ſhe thinks they muſt have been in the bed on both occaſions, from what ſhe *felt*, and, on the laſt occaſion, from what ſhe ſaw, viz. that the petitioners were not only lying one above the other, but under the bed-clothes, and in ſuch a poſition, as to bring Miſs Pirie's leg into bed. As to the ſuppoſition, that Miſs Pirie was

ſtanding

ſtanding with her feet on the floor, this evidence is ſo deciſively adverſe to ſuch a ſuppoſition, that the counſel for the petitioners did not attempt to aſk ſuch a queſtion.

The remark of the petitioners, that the idea of the action in which they were engaged is nonſenſe, if Miſs Pirie's legs were not certainly in the bed, has no other than a ſophiſtical application to the caſe. It may be neceſſary to this action, that in point of fact her legs ſhall have been in the bed; and accordingly, there is no doubt that in fact they were ſo; but it does not follow that it was neceſſary to this action, that Miſs Munro ſhould have felt their legs, or chooſe to ſwear poſitively and directly, they were in the bed when ſhe did not feel them.

The obſervation, that Miſs Munro thought the bed was *new*, when Mrs Woods ſays it was old, is wholly inſignificant; for Mrs Woods agrees with Miſs Munro on the only point regarding it of any importance, that it was apt to creak a little, but not ſo as to be of any importance.

State, p. 52. C, D.

As to the ſecond occaſion, the petitioners feel themſelves ſo fully detected by Miſs Munro's evidence regarding it, that they entirely forget the former prudence in regard to her, and make obſervations which, if they had any force at all, could do nothing leſs than infer direct perjury againſt Miſs Munro.

Pet. p. 106.

They ſay, 'But the ſtatement cannot be true as it is given, 'ſuppoſe the petitioners had had the object attributed to them; 'ſuppoſe they had been mad enough to come to gratify it in this 'manner; and this even after what had paſſed on the former occaſion! Will your Lordſhips believe, that in a bed of no great 'dimenſions, Miſs Munro could *cough repeatedly*, and turn ſeveral 'times directly round upon the petitioners, ſo as to ſee with day-'light Miſs Pirie above Miſs Woods, and yet that they ſhould not 'ſooner have diſcovered that ſhe was awake, and looking at 'them? If it were true, *her eyes muſt juſt have met Miss Pirie's* when 'ſhe turned round. The thing is quite impoſſible.'

It is plain, that if theſe remarks were valid, Miſs Munro muſt be perjured; but they are very manifeſtly inaccurate and unfounded. What Miſs Munro ſays is, 'That from the light, ſhe 'ſuppoſes, on this laſt occaſion, it was about five in the morning, 'and that the light was ſufficient to allow her to diſtinguiſh any 'perſon in the room. Depones, That in order to make them ſen-'ſible ſhe was awake, the witneſs coughed, and turned herſelf: 'That upon this Miſs Woods turned to Miſs Pirie, and ſaid, 'I 'ſuſpect ſhe is awake;' and this was ſaid in a whiſper. Depones,

State, p. 47. F. I.

'That

'That Miſs Woods began a coughing herſelf, and that ſhe ſaid 'to the witneſs ſhe had heard her coughing, and aſked if ſhe 'had been long awake: That the witneſs ſaid ſhe had, and that 'then Miſs Woods ſaid, 'I am afraid you have got a cold, if "you'll get up, and go to ſuch a drawer in the room, you'll get "ſome barley ſugar:' That the witneſs ſaid ſhe did not want any, 'upon which Miſs Woods aſked her to get up, and go to the dreſ-'ſing-room, and get her ſome water. Depones, That the witneſs 'accordingly got up, and went and brought the water; and that 'before this the witneſs, by means of the day-light, had ſeen Miſs 'Pirie in the bed; but when the witneſs returned with the water 'ſhe was gone.'—'That upon the ſecond occaſion alſo, ſhe heard State, p. 51. E. G. 'converſation going on between them in whiſpers, but could not 'diſtinguiſh what it was, unleſs, as above deponed to, when Miſs 'Woods ſaid to Miſs Pirie, ſhe ſuſpected the witneſs was awake. 'Depones, That this did not appear to the witneſs to be in a 'higher tone than the reſt of the converſation; but the witneſs 'had at that time turned round towards them, to hear what they 'would ſay, as ſhe ſuſpected that by that time they knew ſhe was 'awake. Depones, That ſhe thinks ſhe was longer awake the ſe-'cond time than the firſt, and that ſhe had coughed ſeveral times 'to let them know ſhe was awake.'—'That upon the ſecond oc- —— G, H. P. 52 'caſion, when ſhe firſt perceived Miſs Pirie was in bed with Miſs 'Woods, her own face was to the wall, and her back to them; 'but ſhe turned two or three times: That the firſt time ſhe turn-'ed there was not much light, but there was enough to enable 'her to perceive that Miſs Pirie was lying above Miſs Woods. 'Depones, That ſhe had turned ſeveral times before Miſs Woods 'ſaid ſhe ſuſpected the witneſs was awake, and that ſhe cannot ſay 'whether ſhe had obſerved the previous turnings which ſhe made 'or not.'

Your Lordſhips now ſee what Miſs Munro truly ſays, when di-veſted of exaggeration. In the faint light, which was juſt ſufficient to ſhew one perſon above another, there is no improbability whatever in the witneſs turning her head enough to ſee them, without being obſerved by the petitioners, they being occupied with their tribadiſm. Miſs Pirie's eyes would not meet her's, as they would be directed againſt the face of Miſs Woods, and, at any rate, eyes do not meet eyes in dim and faint light; ſo that the whole of this affected impoſſibility is void of any real exiſtence.

The petitioners then refer to their own explanation of this Pet. p. 107. tranſaction in their anſwers to the condeſcendence, on which they

comment; but the reſpondent has little need of other anſwer, than to repeat that article; for it ſeems to her very different indeed from what the petitioners repreſent it. 'The purſuers preſume this is 'an explicit anſwer to the ſtatement. But leſt the defender 'ſhould think ſhe makes a diſcovery of great conſequence, they 'will tell her farther, that *it is not impoſſible*, that on ſome of 'theſe occaſions, Miſs Pirie, in the dreſs above mentioned, *with 'the candle ſtanding on the drawers, and five young ladies in the room, 'may, in place of ſitting erect upon the bed, have reclined, and even 'partly covered herſelf with the blanket in cold weather, while ſhe con-'tinued her converſation with Miſs Woods.* If it be proof of a 'crime, or of ſome criminal purpoſe, that one *woman* ſhould uſe 'this freedom with another *woman*, her intimate friend, with 'whom it was of great conſequence to take the only opportunity 'ſhe had of converſing, what an atrocious crime it muſt be in 'Lady Cumming's eyes, *for one woman to ſleep a whole night, in a 'naked bed, with another.* She is welcome to the full value of the 'explicit ſtatement, which the purſuers give without the ſmalleſt 'reſerve. As they have nothing to conceal, they promiſe her, 'though not required, to be equally explicit in all the other ar-'ticles.'

State, p. 39. E.

Now, is this *an explanation of Miss Munro's* evidence? Is it not, on the contrary, *an equivocating, but yet plainly falſe account of it*, decidedly indicative of guilt? The reſpondent will not reſume the remarks ſhe made on this point, but confidently leaves it to your Lordſhips judgment.

The reſpondent does not think it neceſſary to imitate the petitioners, by appending to the diſcuſſion of theſe particular objections, a general reſumption of all the other arguments on the caſe. As to theſe the reſpondent has already ſpoken, and ſhe will only add, that this general declamation ſhews the ſenſe of the petitioners, that their particular arguments on Miſs Munro's evidence were themſelves unſatisfactory, ſince they attempt to cover their retreat, as it were, by any other matter.

After what the reſpondent has already ſaid in the former part of theſe anſwers, it is very little neceſſary to detain your Lordſhips by anſwering the few remarks that are made by the petitioners on the other witneſſes in this caſe.

Pet. p. 197.

The reſpondent certainly can have no apprehenſion, that your Lordſhips will be deluded by the petitioners' attempt to repreſent the

the evidence of Mary Brown as affording no confirmation of that of Miſs Munro. The confirmation it affords, is of a kind at once in the higheſt degree concluſive, and perfectly common, and recogniſed in all caſes of a ſimilar deſcription, as in caſes of rape, &c. It is eaſy for the petitioners to call it *gossiping*; and affect to treat this woman, whoſe evidence is above all ſuſpicion, with contempt. The reſpondent cannot think it neceſſary to guard your Lordſhips againſt the effects of ſuch a mode of arguing. But when the petitioners ſay, that Miſs Munro had merely told *something of her being disturbed* to this nurſe, and of her previous communications with Miſs Cumming, they ſurely truſt with implicit confidence to your Lordſhips' total oblivion of the teſtimony about which they are ſpeaking.

In one ſhort paſſage Mary Brown depones, 'That Miſs Janet, State, p. 63. 'after heſitating about a minute, and being like to cry, ſaid 'that D. F. "Miſs Pirie came to Miſs Woods' bed in the night. Depones, "That Miſs Janet ſaid ſhe was awakened with a noiſe, and was di- "ſturbed with the bed ſhaking, and could not get the bed-clothes "kept on, and ſhe had ſpoken to Miſs Pirie, and deſired her to go "away, for that ſhe could not get ſleep: That Miſs Pirie ſaid ſhe "was ſtanding at the bed ſide; and then Miſs Woods told her ſhe "had better go away; and ſhe thinks theſe were the very words "Miſs Munro uſed. Depones, That Miſs Munro added, that Miſs "Pirie was lying above Miſs Woods."

In ſhort, this evidence confirms almoſt every one material circumſtance which Miſs Munro relates, as the reſpondent indeed has already ſhewn. As to what Charlotte had told Miſs Munro, the petitioners are miſtaken in ſaying that that was not mentioned to Mary Brown. At page 65. of the State, letter B, your Lordſhips will find that it is mentioned. The reſpondent may only further obſerve, by the way, that when Mary Brown mentions that Miſs Janet was awakened with a noiſe, ſhe gives an account very nearly identical with that for which Miſs Cumming was accuſed of perjury; and further, that it is decidedly proved by the evidence of this witneſs Mary Brown, that Miſs Munro could not poſſibly have been poiſoned, as it is ſaid, and terrified with a horrible ſtory by Miſs Cumming. For Mary Brown diſtinctly ſays, that ſhe only complained ſhe was greatly diſturbed; and it was what the witneſs ſaid that made her take it up as more wicked than ſhe underſtood it to be.

This, of itſelf, is perfectly ſufficient to overthrow at once all the laboured conjectures of the petitioners regarding the native corruptiou

ruption of the mind of Miſs Cumming, and the corruption communicated by her to that of Miſs Munro.

With regard to the evidence of Miſs Stirling, the reſpondent has already made ſome obſervations, and it is not neceſſary for her, in anſwer to thoſe made by the petitioners, to ſay much more. The reſpondent will ſay, however, that the remark with which the petitioners begin their obſervations, is a very groſs inſtance of *petitio principii*; and that there is not in fact the ſmalleſt evidence that Miſs Cumming took any pains to make any calumny to be believed, or to excite any prejudice. The communication which ſhe made with regard to what ſhe obſerved, was nothing more than was inevitably incident to human nature in ſuch a ſituation. To ſuppoſe Miſs Cumming, having witneſſed ſuch things, ſhould *never* have ſpoken of them at all; and to infer, becauſe ſhe did ſpeak of them to few of her companions, that therefore ſhe was taking pains to make calumny be believed, and excite prejudices, is ſurely any thing but reaſonable.

That Miſs Stirling had obſerved nothing of the nocturnal intercourſe of the petitioners, is indeed true. But ſhe had as little obſerved *that intercourſe*, which they themſelves *admit*, as that of which Miſs Cumming ſpeaks; and yet their pretended nocturnal viſits with candles, muſt have had at leaſt as great a tendency to waken her and attract her attention, as thoſe deſcribed by Miſs Cumming. In particular, your Lordſhips will remember the account which *they* pretend to give of the laſt occaſion on which Miſs Cumming was diſturbed by them; an account involving quite as much that ſhould have been obſerved by Miſs Stirling, as any thing which Miſs Cumming deſcribes to have happened on that occaſion. The petitioners, therefore, are bound by their own admiſſions to admit as true, the account which Miſs Stirling herſelf gives of the cauſe of her want of obſervation, viz. that ſhe never had it in her power, for ſhe always fell aſleep, and never was awakened or diſturbed.

State, p. 112.

When the petitioners ſay that Miſs Stirling, though meaning to be a perfectly fair witneſs, appears to have been influenced by Miſs Cumming, the reſpondent muſt reply, that ſhe can ſee no trace whatever of any ſuch influence; and without any imputation whatever on Miſs Stirling, it is abſolutely impoſſible for any perſon who reads her depoſition, and the letter which accompanied it, not to perceive at once, that ſhe is a very indiſtinct witneſs. It has already been obſerved, that ſhe had been deſired to diſcharge the whole buſineſs from her mind; and ſhe certainly had

had loſt, in a conſiderable degree, any accurate recollection of what ſhe had witneſſed in regard to it. To this cauſe is manifeſtly owing that obſcurity in which Miſs Stirling is ſo much involved, and which could, with no pretence of reaſon, be aſcribed to any operation of Miſs Cumming upon her mind. After all, however, the evidence of Miſs Stirling, as has already been ſhewn, is amply ſufficient to anſwer the chief purpoſe for which the reſpondent brought it forward, *i. e.* to demonſtrate the groſs and wilful perjury of Charlotte Whiffin in favour of the petitioners. That Charlotte did converſe with Miſs Stirling on the ſubject of the petitioners' miſconduct, is undeniable, as has already been ſufficiently ſhewn, and need not again be reſumed. Even the very uncertainty and confuſion of Miſs Stirling is of itſelf demonſtration. If Miſs Cumming only had ſpoken to her on this ſubject,—if Charlotte had not ſpoken, and ſpoken *often*,—how could ſhe have fallen into any ſuch uncertainty? She would have told your Lordſhips at once, and unheſitatingly, that it was from Miſs Cumming, and not from Charlotte, ſhe had thoſe communications.

There is a material feature in this cauſe, which muſt not be paſſed over unnoticed. A multitude of circumſtances are mentioned, both by Miſs Munro and Miſs Cumming, which fell under the knowledge of various young ladies at the ſchool, and with regard to which their evidence might have been checked; yet not one of thoſe ladies was called for the petitioners; but they contented themſelves with a ſcullion in the kitchen, called Campbell, who knew, or pretended to know, nothing about the matter. Why did not the petitioners call the Miſs Dunbars, though it was incompetent for the reſpondent to do ſo? Will they have the aſſurance to ſtate to your Lordſhips that the whole relations of the reſpondent had entered into this conſpiracy, and were determined to perjure themſelves in its ſupport? They have not, and dared not venture to make ſo abſurd an allegation; and why, then, do they wilfully exclude the light, and give up a certain opportunity of detecting the pretended perjury of Miſs Cumming? But if the Miſs Dunbars, too, are to be held as unworthy of credit, why was not Miſs Cunynghame and Miſs Edgar examined? Their teſtimony could have added nothing to the reſpondent's caſe, but it would have afforded the infallible means of rebutting the evidence in her favour if it had been falſe. Suppoſe your Lordſhips were to take at ſecond hand Lady Cunynghame's opinion, that Miſs Cunynghame *never ſaid* that ſhe obſerved any impropriety, or heard of any thing of the kind, it does not follow that ſhe never did obſerve them, or hear of them. And granting even this, Miſs Cunynynghame

might have checked the other witneſſes, in various other particulars unconnected with thoſe improprieties.

It ſeems, the petitioners were aſſured, that the Miſs Edgars had ſaid the ſame thing. This is not the firſt time that the petitioners, in the courſe of their argument, take the liberty of telling your Lordſhips, on their authority, what the witneſſes would have ſaid if they had been examined. But the reſpondent hopes ſhe will be pardoned, for not receiving as evidence every thing which they chooſe to aſſert, and more particularly, what they aſſert only as a hearſay. Miſs Edgar's teſtimony would have been concluſive againſt Miſs Munro, if the latter had been incorrect; but to Miſs Edgar they prudently do not think proper to refer.

The reſpondent believes, that ſhe has now gone over all the objections which have been urged againſt the credibility of the evidence adduced in ſupport of the condescendence. When allowance is made for the inaccuracies which attend all human teſtimony, and for the groſs and palpable manner in which thoſe inaccuracies are exaggerated and miſrepreſented in the preſent caſe, the reſpondent is confident that your Lordſhips will find, throughout the whole proof, nothing but 'ſubſtantial truth, amidſt circumſtan-'tial variety;' and that you will adhere to your opinion, that the charge againſt the petitioners is completely eſtabliſhed.

But even if the reſpondent had failed in the proof which ſhe undertook, ſhe muſt be entitled to an abſolvitor from the preſent action. The petitioners claim reparation for an injury which ſhe is alleged to have committed againſt them, by raiſing or propagating ſlander to their prejudice. But malice is the eſſence of ſlander; and it is proved that the reſpondent was not actuated by malice. If words are ſpoken from an innocent or laudable motive, if they are ſpoken in defence of the juſt rights of the perſon who ſpeaks them, he is not liable for the conſequences, how detrimental ſoever they may be to a third party: 'Quod quis ad 'ſui defenſionem dixerit, id jure dixiſſe exiſtimatur.' And it is the ſame if they are ſpoken in friendſhip and confidence, for the advantage of thoſe whoſe intereſt he is entitled or bound to advance. Nor does the rule only obtain where an individual, in diſcharge of his duty, tells truth to the prejudice of a third party, but alſo when he tells what is falſe, provided he believes and has reaſonable ground to believe, that it is true. Men are frequently called upon to act without the poſſibility of aſcertaining whether the information on which they proceed is correct or not; and if a perſon has been deceived, without being groſsly negligent or imprudent,

dent, he cannot be reſponſible for an unintentional error. Keeping theſe principles in view, your Lordſhips are entreated to attend to the circumſtances in which the reſpondent was placed, and the line of conduct which ſhe purſued.

Miſs Cumming viſited the reſpondent on Monday the 12th of November, and related the improprieties which ſhe had witneſſed herſelf, and thoſe of which Miſs Munro and Charlotte Whiffin had told her. Next morning Miſs Dunbar was ſent for, and confirmed the ſtory, by relating what ſhe had learnt from Miſs Munro and Charlotte Whiffin. The petitioners have not thought fit either to examine this young lady, or to allow the reſpondent to examine her. Therefore, the petitioners are not entitled to deny the fact of this communication, when they object to the only poſſible evidence by which it could be eſtabliſhed. Indeed, your Lordſhips muſt preſume it, if nothing is proved to the reverſe; becauſe both Miſs Munro and Miſs Stirling mention, that one, if not both of the Miſs Dunbars, was in the knowledge of the petitioners' miſconduct. Miſs Munro, in particular, after relating the ſtory which Charlotte told them of her having obſerved the petitioners upon the ſofa, depones, 'That Miſs Margaret 'Dunbar was preſent when this converſation took place with the 'maid Charlotte.' And Miſs Stirling, being 'interrogated by Lord 'Meadowbank, Did any of the other ladies appear to underſtand 'that any thing improper was practiſed between the purſuers? de- 'pones, That the Miſs Dunbars were the only other ladies that 'the witneſs converſed with upon the ſubject.'

State, p. 48. C.

—— p. 115. D.

On the information of Miſs Cumming, corroborated by that of her couſin, the reſpondent removed theſe three young ladies from the ſchool. It was the unanimous opinion of your Lordſhips, if ſhe had done this, and no more, that her conduct would have been blameleſs, whether the petitioners were innocent or guilty, and whatever conſequences might have ariſen from the removal of her grandaughters.

But it was ſaid, that ſhe circulated the ſtory; and your Lordſhips are now requeſted to conſider to what extent that averment is true. It is admitted, that ſhe wrote the notes produced by Mrs Anſtruther and Lady Cunynghame, but her reaſon for doing ſo is aſſigned in theſe notes, namely, that ſhe had recommended the ſchool to both theſe ladies; and the fact, that ſhe did recommend it to both, is clearly eſtabliſhed in evidence. Mrs Anſtruther depones, 'That Lady Chriſtian Erſkine and the Miſs Erſkines, her 'daughters, were the firſt perſons, as far as ſhe recollects, that re- 'commended the purſuers' ſchool to the witneſs: That on this re- 'commendation

—— p 116. G.

: commendation the witneſs wrote to her ſiſter-in-law, Mrs Camp-
' bell of Stonefield, to inquire about the character of the purſuers,
' and the witneſs was informed by Mrs Campbell, that *ſhe had*
' *learnt from Lady Cumming Gordon a highly favourable character of*
' *the purſuers, and that it was impoſſible for any perſon to ſpeak more*
' *favourably than her ladyſhip had done;* and ſhe received this infor-
' mation from Mrs Campbell before ſhe put her daughter to the
' ſchool.'

Mrs Campbell confirms the teſtimony of her ſiſter-in-law, and
State, p. 117. G. ' is certain ſhe received a very *warm recommendation from one or*
' *other of the Miſs Cummings*, and *ſhe rather thinks Miſs Jane*, and
' ſimilar recommendations from the other ladies above-mention-
' ed; and the witneſs communicated this information to Mrs
' Anſtruther, who was in Edinburgh.' After this evidence, your Lordſhips will certainly hold the reſpondent entitled to believe, that the recommendation of herſelf and her daughters had ſome weight with Mrs Anſtruther, in ſending her daughters to Drumſheugh. and of conſequence, that ſhe was reſponſible, if ſhe diſcovered that the petitioners were unworthy of that recommendation, without acquainting Mrs Anſtruther.

The reſpondent ſtood in preciſely the ſame ſituation towards Lady Cunynghame. That Lady, after mentioning various per-
— p. 126. C. ſons who had recommended the ſchool to her, being ' interro-
' gated, From whom ſhe next heard the character of the ſchool:
' depones, That ſhe cannot recollect, becauſe ſhe made a great
' many enquiries; in particular, ſhe remembers dining one day
' at Mr Walker's at Dalry, where Lady Cumming Gordon was,
' and knowing that ſhe had ſome young friends at the ſchool, the
' witneſs inquired at her what was her opinion of it; *and Lady*
' *Cumming Gordon gave it the higheſt character.*' She afterwards de-
— p. 129. H. pones, that ' ſhe had ſome converſation with one of the Miſs Cum-
' mings, at the Dutcheſs of Gordon's, but with which ſhe cannot
' ſay, about the ſchool, *when Miſs Cumming ſpoke very highly of the*
' *ſchool.*'

Upon the ſame principle, therefore, the reſpondent wrote to Lady Cunynghame, but ſhe did not do ſo till Thurſday evening, after ſhe had heard Miſs Munro's ſtory, through the medium of
— p. 100. E. Miſs Stevenſon. That lady depones, ' That on the day on which
' ſhe (Miſs Munro) left the ſchool, ſhe came to the witneſs, and
' communicated to her ſome very particular circumſtances that
' had happened at the ſchool, and theſe circumſtances related to
' improper conduct on the part of the purſuers. Interrogated, Did
' the witneſs, in conſequence of this communication, take any
' meaſures

'measures to appriſe the defender, either directly, or by means of 'any one elſe, of what Miſs Munro had told her? depones, That 'ſhe did, through the medium of Mrs Forbes. Depones, That ſhe 'communicated to Mrs Forbes the full ſubſtance of what Miſs 'Munro had told her:'—'That ſhe made the communication de- State, p. 100. G.
'poned to, to Mrs Forbes, on the day after her receiving it from 'Miſs Munro, and ſhe thinks about two or three o'clock of that 'day, which was Thurſday.'

The reſpondent communicated the circumſtance to no other perſon. Her ſon-in-law, knowing that his friend Mr Hope was intimately connected with Mr Munro, recommended, through that gentleman, that Mr Munro ſhould converſe with his daughter, but poſitively refuſed to give any information himſelf upon the ſubject, as your Lordſhips will find from Mr Hope's depoſition. —— p. 102.

Miſs Stirling, again, was taken from the ſchool, in conſequence of her own ſolicitations that her friends might be informed. She depones, 'That on the Tueſday that Miſs Cumming was taken —— p. 115. A.
'away from ſchool, Miſs Cumming told her, that ſome of her 'friends would write to the witneſs's friends about taking her 'away; and the witneſs begged ſhe would put them in mind to do 'it, and this ſhe was very anxious about, and urged it repeatedly.' Mrs Forbes accordingly ſpoke to Mrs Dundas, a lady who had the charge of Miſs Stirling, in Edinburgh, and Miſs Stirling was removed, but not before Mrs Dundas had heard Miſs Munro's account of the whole matter, through the medium of Miſs Stevenſon. If either Mr or Mrs Forbes were to blame in making theſe communications, they muſt be reſponſible; but that is not the queſtion now before your Lordſhips. In the reſpondent's apprehenſion, they did nothing but what duty and friendſhip required.

Lady Cunynghame, in conſequence of the card which ſhe received, called upon the reſpondent, and earneſtly entreated to know what her objections to the ſchool were; but it is in evidence, that the reſpondent repeatedly refuſed to tell. Lady Cunynghame afterwards went away, but returned in ſome hours afterwards; and then the reſpondent, for the first time, communicated, in confidence, the particulars which induced her to take her grandchildren from the ſchool. Lady Cunynghame depones, 'That upon the ſecond occaſion, when ſhe called upon the de- —— p. 130. I.
'fender, and when the defender did mention the particulars 'above alluded to, ſhe certainly enjoined ſecrecy to the witneſs, '*and cautioned her not to mention it to a ſingle individual, not even to* '*Sir William.*'

Hence it appears, that the respondent gave no farther circulation to the story, than by writing the notes in process to the ladies to whom she had recommended the school, and by communicating the circumstances of the petitioners' conduct to one of them under the seal of secrecy. If the story transpired farther, it was not her fault.

Now, the respondent puts it to your Lordships, whether a parent and a friend could have acted otherwise than she did? The evidence of two witnesses, her own grandchildren, one of whom declared what she herself had observed, and the other what the maid and Miss Munro had related, was a reasonable ground of belief; and before she disclosed the particulars to Lady Cunynghame, she had the farther evidence of Miss Munro, conveyed through a different channel. But if she believed in her conscience that the story was true, and had a reasonable ground for doing so, it is submitted, that she was entitled to consult the safety of her own grandchildren, and the children whom she had been the means of placing at the school, let the consequences to the petitioners be what they might. Must a parent, who imagines that her child is exposed to ruin in its most hideous form, remain inactive, because she has not obtained legal evidence of the fact? Though the child, though her relations, though the parent herself had been eye-witness, according to the petitioners' argument, there is no remedy; they must submit in silence to the impending calamity. The laws of self preservation, imprinted upon the human mind, must shew intuitively that this doctrine is absurd. But if the respondent was entitled to remove her own grandchild from such tremendous peril, she was entitled, and bound to warn every other parent whose child by her means had been exposed to it. There can be no distinction here. The respondent had incurred a responsibility with regard to the daughters of Lady Cunynghame and Mrs Anstruther, which placed her in the very same situation with regard to them, that she stood in with regard to her own grandaughter. Nay, the respondent goes farther: if any of her friends had had a child at the school, the ties of friendship alone required that she should communicate her information to that person. By doing so, she was guiltless of slander; for slander presupposes an intention to injure; but she had no intention to injure; she believed that she was defending herself, and those she was bound to defend, from the most severe and irremediable injury.

If

If the respondent had unnecessarily published the story to the world, she would then have been worthy of censure, but she told it only to those who were interested to know it, and she told it under the injunction of secrecy. It is said in the petition, that this injunction aggravated the respondent's fault, as a stab in the dark is worse than an open attack. To repeat such an observation is to confute it. Slander is injurious in proportion as it spreads. If the faults of others are confided to those alone who are interested to know them, the information must have been given to benefit the person informed, with the least possible prejudice to the person informed against. Such conduct is the reverse of malice; it is a lawful and praiseworthy exercise of friendship.

But it is said, that the respondent was rash and imprudent in not taking other methods of ascertaining whether the circumstances communicated to her were true. It is said, that she should have conversed with Charlotte Whiffin,—visited the premises at Drumsheugh,—and, above all, that she should have admitted the petitioners to her presence, when they requested to see her, by their letter of the 15th November. Upon this point her conduct is contrasted with that of Lady Cunynghame, who relates that she went to Drumsheugh, and had an affecting interview with Miss Woods.

Before the respondent is blamed on these accounts, it is proper to consider what grounds she had to believe that the petitioners were guilty. First, There was the positive and unequivocal testimony of Miss Cumming; then there was Charlotte Whiffin's testimony, through Miss Dunbar; and then the testimony of the last mentioned lady, to collateral but corroborative circumstances. Last of all, there was Miss Munro's testimony, through the medium of Miss Stevenson, in perfect unison with Miss Cumming's, and equally complete and conclusive. Observe, then, that the respondent had all the direct evidence before her which your Lordships had when you pronounced the interlocutor under review. But she had a great deal more; for you had not heard Miss Dunbar's in corroboration, neither had you any previous acquaintance with the character of Miss Cumming; whereas the respondent had known her from her infancy; had known her integrity, her truth, and the spotless purity of her mind. The evidence, too, was not then perplexed and darkened by the arts of those who tremble to let it be seen in its natural and genuine state. But if a majority of your Lordships discovered in that evidence sufficient grounds to believe

} Weight evidence of Cir

believe the charge againſt the petitioners, how much more muſt it have influenced the reſpondent to form that concluſion. She confided in the veracity of theſe young women, and of Miſs Munro, and never thought of checking it by the teſtimony of a chambermaid. She had not the moſt diſtant ſuſpicion that that unfortunate woman would deny what ſhe had aſſerted in preſence of ſo many ladies of character; and as for obtaining the ſtory from her own mouth, it would have had the appearance of tampering clandeſtinely with the ſervant of the petitioners. She never dreamt that an inſpection of a ſofa, or a key-hole, could throw any light on the caſe, or if ſhe had known by inſpiration that Charlotte Whiffin's account was incorrect, that circumſtance could never have ſhaken her faith in the teſtimony of the young ladies as to what they themſelves had witneſſed. They might have miſconceived what Charlotte ſaid, or ſhe might have forgotten or miſtated a trivial fact, without impeaching the credit of either. A majority of your Lordſhips ſaw the key-hole and the ſofa, and heard all the comments upon them which human ingenuity could deviſe; yet you were not convinced of the petitioners' innocence. Whence, then, can it be inferred, that a ſimilar inſpection would have produced a different effect on the reſpondent?

But the reſpondent has been accuſed of cruelty, in not granting the interview which the petitioners requeſted in their letter of the 16th of November. It will be remembered, that the import of that letter was a ſolemn proteſtation of their innocence, and an attempt to raiſe a ſuſpicion againſt Miſs Cumming. If they had applied to the reſpondent for aſſiſtance or advice, either would have been cheerfully given. But after the poſitive proof which ſhe had obtained of their miſconduct, ſhe looked on theſe proteſtations as a palpable attempt to deceive her, and the attack on Miſs Cumming as an aggravation of their offence. Lady Cunynghame had an interview with Miſs Woods. She heard ſimilar proteſtations uttered in the moſt affecting manner, and ſhe was moved to tears on the occaſion; yet when ſhe was made acquainted with the grounds, or rather with part of the grounds on which the reſpondent's belief proceeded, ſhe alſo took her daughter from the ſchool. Your Lordſhips have heard the ſame proteſtations reiterated. You have heard every explanation which the petitioners could give of their conduct; every thing that talent or eloquence could urge in their defence, and yet a majority of your Lordſhips were not convinced of their innocence. What reaſon is there, then, to preſume, that an interview would have altered the opinion of the reſpondent

ſpondent, and have induced her to adopt a different line of conduct from what ſhe purſued. Perhaps ſhe may now regret, that ſhe did not grant their requeſt, becauſe it might have afforded more complete evidence of their guilt, if a confeſſion can be conſidered more complete evidence than the teſtimony already before you; but that ſurely is not a ground on which the petitioners can be entitled to blame her.

Granting, therefore, that the facts ſet forth in the condeſcendence are falſe,—granting that the petitioners are innocent of the offence laid to their charge,—it is ſubmitted, that the reſpondent had reaſonable and probable grounds for her belief to the contrary, and of conſequence, that ſhe is juſtified for removing her own grandchildren from the ſchool, and adviſing Lady Cunynghame and Mrs Anſtruther, confidentially, to follow her example. There was no malice in this: ſhe acted in defence of her child, and of children for whom ſhe was reſponſible. She acted *optima fide*; and her error, if ſhe was in an error, is not attributable to herſelf. Her conduct was the offspring neither of precipitancy nor culpable negligence. If ſhe had examined into the facts as patiently and ably as your Lordſhips have done, is it credible, that ſhe would have formed an opinion different from yours, who were neither *in mala fide*, nor precipitate, nor culpably negligent? But if neither *mala fides*, nor precipitancy, nor culpable negligence, can be alleged, it is ſubmitted, that the action muſt be diſmiſſed.

The defence now pleaded, reſts on the firſt principles of natural juriſprudence, and it requires the weight of no authority in its ſupport. If authority is wanting, your Lordſhips will find it in the common books of Engliſh law, under the following heads: 'Words are 'not actionable, if they are ſpoken out of a motive of friendſhip, 'and without intention to defame.—Words are not actionable, if 'they are ſpoken privately and in confidence.' Under theſe heads various caſes are reported, where individuals ſuffered material prejudice from the falſe information of others; but when that information was given without malice, and on reaſonable grounds of belief, action was uniformly refuſed. You will find authority to the ſame effect in the works of our inſtitute writers, particularly in thoſe of Sir George Mackenzie and Mr Erſkine. But on this ground of defence the reſpondent will not dwell; not becauſe ſhe doubts its ſolidity, but becauſe ſhe feels it to be ſuperfluous. Crim. tit. 30. b. iv. t. 4. § 82.

In reſpect whereof, &c.

GEO. CRANSTOUN.
J. H. MACKENZIE.

Lord Meadowbank
With Mr Balfours Compliments

SPEECHES

OF THE

JUDGES

OF THE

SECOND DIVISION OF THE COURT OF SESSION,

UPON ADVISING THE CAUSE,

MISSES WOODS AND PIRIE

AGAINST

LADY CUMMING GORDON,

First on the 25th of June 1811, *and next on the 26th of February* 1812.

In order that as correct and accurate copies as possible of the Judges' Speeches, at deciding the cause Misses Woods and Pirie against Lady Cumming Gordon, might be obtained, the Agent for the Respondents, after the appeal had been intimated, by the advice of Counsel, wrote to each of the Judges who had delivered an opinion on the case, requesting to be favoured with any written copy which his Lordship might have preserved of his speech. In consequence of this, the speeches which follow, of Lord Meadowbank, Lord Woodhouselee, Lord Craigie, and first speech of Lord Boyle, were obtained. Lord Justice-Clerk, now Lord President Hope, had not prepared any written speech; but his Lordship had the goodness to offer to revise any speech which might be made out from the Notes of Counsel, and this he has accordingly done. The other speeches have been prepared from the Short-hand Notes of a Counsel not connected with the cause, who was present at the second, but not at the first advising. The first speeches of Lord Glenlee and Lord Robertson, and the speech of the late Lord Newton, are still wanting. The Agent for the Respondents would have willingly concurred with the Agents for the Appellant, in endeavouring to procure them; but these gentlemen refused either to be at any trouble in the matter, or to defray any part of the expence of printing.

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LORD MEADOWBANK.

SUBSTANCE of Lord MEADOWBANK's ARGUMENT, in giving his Opinion at the two Advisings of the Cause, WOODS and PIRIE against Lady CUMMING GORDON; as also, Remarks on the Detail of the Evidence, furnished by his Notes on the State, and alluded to more generally in that argument.

[*Revised by his Lordship.*]

NO cause was ever more extraordinary, or required a more grave and mature consideration. The pursuers are two women of fair and irreproachable character, whose ruin has been accomplished by communications relative to their conduct, which, however confidentially conceived, could not fail to produce that effect. The defender is an honourable and very respectable Scottish Matron, who thought herself called upon, by the strongest moral duties, to save from contamination her own grandchildren, that she had placed at the pursuers' school; and to apprise the friends and relatives of others, that had been placed there, as she might suppose, in consequence of her recommendation or example, that such recommendation had been now withdrawn for reasons of great weight. There are also the young persons, or at least one young person, from whom the information of the fatal imputation proceeded,—one, unfortunately wanting in the advantages of legitimacy, and of a European complexion,—and of consequence the more dependent on the favour of her connections and protectors. These persons have been brought forward as witnesses, to establish the truth of the imputation; and

their deep interest so to establish it, was pressed on the Lord Ordinary in the outset of the cause, as the strongest ground for the defender's persisting to obtain leave to prove the *veritas convicii*, in order to convince the world that these young persons were the relators of a truth, and not the inventors of a calumny.

And in my mind, there is a fourth party whose interest is deeply at stake, I mean the public; for the virtues, the comforts, and the freedom of domestic intercourse, mainly depend on the purity of female manners, and that, again, on their habits of intercourse remaining as they have hitherto been,—free from suspicion. Dreading the baleful effects on domestic morals, which even surmises of such a litigation as the present must produce,—foreseeing, also, the taint arising from it that would attach to the young persons, the particular objects of her solicitude,—I urged strongly the defender's men of business to make inquiries of their own, and to be sure of the grounds in justice, prudence, and expediency, on which they went, before they sanctioned proceeding farther by their advice; and your Lordships, impressed with similar apprehensions, have taken every precaution within your power, though necessarily with small hopes of success, to confine this cause by the walls of the Court, and keep its subject and its investigations unknown in general society.

But the value of the interests of the concerned, and the safety of the public, do not form even the chief circumstances which call for your Lordships exertions on the present occasion. The extraordinary nature of the case must unavoidably bestow on it the character of a *cause celèbre*. The ruin of the pursuers is justified, by charging them with the guilt of committing with one another a species of the *venus nefanda* hitherto unknown in this country, even as a calumny against any of the sex. Independently of the awkwardness and disgust which the discussion of such cases in Courts of Justice, from their trenching on the ordinary decencies observed in language, is unavoidably attended with, it is too well ascertained, by the experience of other countries, that the trial of them is accompanied with difficulties of a peculiar nature. Where the facts alleged are of so extraordinary a character, that the evidence of them comes to be addressed, rather to the imagination than to actual observation, a species of intoxication is apt to appear among all concerned, and even among the conductors of the discussions. In ordinary cases, the interests of parties are subjected to the candid consideration of enlightened

counsel, aware of what is due to all sorts of probabilities and presumptions, and endowed with becoming sympathies for the feelings and the rights of the persons opposed to their clients. The partialities of clients themselves are by these means moderated; and even your Lordships do pay, and ought to pay, regard to the manner with which causes are thus brought forward and argued before you. The temperate earnestness of counsel of highly cultivated minds, gives to some extent in pledge the correctness of their own characters, for the fairness and accuracy of the proceedings,—for the charges, the investigations, and the results, in behalf of which they contend. But in cases of the complexion of the present, your Lordships, instead of deriving advantages in this way, are bound to be upon your guard, and arm yourselves against being caught by the enthusiasm which is apt to spread from the parties to their counsel, and has been known to rage even on the bench of the French Parliaments. Men of more candid or more elegant and cultivated minds, never appeared in any cause than the present; but it is my duty to tell your Lordships, that Lady Cumming Gordon herself could not be more persuaded,—more agitated,—more overpowered by the circumstances of her case,—or more blind to the rights of her opponents,—than some of my friends at the Bar on her side appeared to me to be, from the first outset of the cause. She esteems the cause to be that of all Christian matrons, and thought herself entitled to demand, of even the mothers of witnesses from whom she was demanding information, to make common cause with her. But her learned counsel, too, were blind to the extravagance of the plea, That a proof ought to be allowed, because it was a matter of justice to the authors of the imputation, to give them an opportunity to swear to the truth of it, and so purge themselves of the suspicion of calumny. Nay, it even was held out as a point of dittay against the ruined women themselves, that they should have dared to apply to a court of justice for redress. This was represented as the most hardened effrontery, and as justifying the defender's measures in her defence, whatever should be the effects of them, either upon the reputation of the young persons that she was so anxious to protect, or on the character of female manners in general society.

The very virtues of a mind of high sensibility are apt to feed this disease of the imagination,—the extraordinary nature of the imputation is thought to warrant its truth,—to preclude the possibility of invention,—and to sanction every measure of harsh-

ness,

ness, impetuosity, or obduracy. It operates, in short, upon the moral feelings, as the imputation of witchcraft did upon the religious ones of our ancestors: The charge was the evidence of its own truth; and all the nonsense, and the extravagance, and the palpable falsehood, with which it was often accompanied, escaped the observation of the intelligent and religious, but enthusiastic minds, of the prosecutors and judges.

And I need not remark to your Lordships, that when once enthusiasm gets into a cause, it is not to be confined to one side,—extravagance on one side suggests charges of *mala fides* from the other; and the zeal which results from the collision of heated partizans, is never exempted from the disease of blindness.

And in this case, I must say, all my own efforts to produce cool and accurate inquiry into the fact, proved unaccountably unsuccessful, if the circumstance to which I have been alluding does not explain it. After one hearing, I appointed a second, recommending, in the mean time, from the strongest motives, accurate inquiry; and when this second hearing came on, the account given of the business no doubt appeared to me so different, that I requested to have the materials in writing, from which the circumstances had been related, hoping thereby to give them a fixed and accurate character, and urging again the most correct and circumspect inquiry. And when this written statement appeared, though signed by three eminent counsel, and partly curtailed of certain *vivâ voce* allegations, it retained the most striking indications of loose inquiry, inaccuracy, and either of a confusion of thought, or gross and palpable improbability, not a little unbecoming, in bringing forward a charge of so grave a nature in a matured state. Particularly, there is alleged an early disclosure of the pursuers' wickedness to several of the elder scholars, followed by circumstances that necessarily apprized themselves of their detection, and subjected them openly to the insolence of their maid, and to public shame in presence of their pupils; while, at the same time, the pursuers are made to persist in the perpetration of their crimes, in circumstances the most exposed to the observation of the elder girls, whose attention had been thus excited to watch their enormities. In my original report, I made some remarks on this subject, and the defender thought proper to allege, that the particulars I remarked upon were *clerical errors*. But they were not *clerical errors;* for no correction, by substituting words, would mend them. They, in my mind, resulted from the rash assumption of an ill concocted

tale,

tale, never carefully sifted, and subjected to a wise consideration. And it will be seen, in the course of my observations, that the more essential parts of the improbability adhere incurably to the charge, as it now appears upon the evidence. At present, however, it is only the slovenliness of the inquiries, on which I remark; and I understand it is in fact now allowed, that the charge was brought forward singly on Miss Cumming's report, without tracing back any of the indications, however ample the opportunity, which that report afforded. I can only account for the failure in the duty of careful inquiry, so earnestly and perseveringly recommended, by the supposition, that where faith is strong, inquiry appears superfluous, and scepticism, insensibility, prejudice, or hostility.

In this state of matters, your Lordships allowed the defender to condescend upon the evidence of the imputation she offered to establish; and owing, as I apprehend, to the circumstances I have mentioned, it is certainly now clear, that even the condescendence also was not prepared with the accuracy that was to be expected. In the written statement, the criminal correspondence was stated in terms that indicated its proceeding from the beginning of May 1810. Now, the commencement of it is dated only from the holidays of July that year; but it has since turned out, that part of these holidays were passed at Portobello: and now a circumstance, formerly unheard of, is reported by the defender's principal witness as having taken place at Portobello, of which there is not one hint in the condescendence, or any investigation in the proof; and a strange, and in my mind a most unjustifiable, advantage is attempted on the part of the defender to be made of this omission, for which it is she that is answerable, by endeavouring to cover, in the darkness of Portobello, detected falsehood of imputations at Drumsheugh.

But, under all disadvantages, the case is to be tried and decided. I certainly have spared no pains to make myself thoroughly acquainted with it. I attended the examination of all the witnesses, and daily compared my observations with the Lord President's, who also attended with equal assiduity. In this way I acquired much familiarity with the case; and though I now see that there have been omissions in the investigation, which less inexperience in cases of such a complexion would have prevented, I have no hesitation, on the whole, to avow to your Lordships, that the opinion I have formed has no shade of doubt in

 it,

it, and is, that the criminal imputation against the pursuers is false and groundless.

The charge of the defender, after the series of rectifications and prunings which it has undergone, seems now to amount to this: That from the holidays of the school in summer 1810, till near the period of its final breaking up in November, the pursuers were guilty of acts of lewdness with one another, having the appearance and characters of unnatural acts of copulation: That the detection was made by Miss Cumming, who slept in the same bed with Miss Pirie, and by Miss Munro, who slept in the same bed with Miss Woods: That these beds were the scene of the guilt; and that after the detection, observations made by Miss Cumming at the time, led her to conclude, that similar enormities had been committed by the pursuers during the holidays, when they slept together, and Miss Cumming slept in a bed by herself, placed across the foot of their bed. Miss Cumming had been at school from the month of December preceding. Miss Munro arrived at school only in September following; and as Miss Cumming communicated to Miss Munro the first of her observations, which, according to her own account, afforded her certainty of the guilt, and Miss Munro then mentioned, what had previously and recently been observed by herself, viz. about three weeks after she came to school, the period of the alleged criminal intercourse is ascertained to be the latter end of September, and all October, under detection, and comprehending August and July from recollection. Now, here, we are called upon to consider,

First, The nature of the imputation.
Second, The circumstances under which the crime is said to have been committed by the pursuers.
Third, The characters and situations of the witnesses brought to prove it; and, then,
Fourth, To examine in detail the evidence adduced for and against the truth of the charge.

Nature of the imputation.

I. And, in the outset, I must acknowledge, that with respect to the nature of the crime charged, I labour under a very high degree of incredulity. I have yet heard nothing to shake the observations that I made to your Lordships, in my original report of the cause. I am not at all appalled by the imputations of ignorance and the like, thrown out against me on the part of the defender: They proceed from a quarter that I know cannot seriously

ously mean me any disrespect. But I care not though it were otherwise, for I shall never dread obloquy for thinking freely, and endeavouring to reason soundly and rationally. On the contrary, I shall read to your Lordships two Hindoo laws, from the collection of the ordinances of Menu, published at Calcutta by authority, which are certainly worth all the authorities quoted for the defender put together. *(Lord Meadowbank handed the book to the defender's counsel, by whom it has by some accident been lost.)* But even these authorities admit of being construed in conformity to my opinion. There is no sort of doubt, that women of a peculiar conformation, from an elongation of the *clitoris*, are capable both of giving and receiving venereal pleasure, in intercourse with women, by imitating the functions of a male in copulation; and that in some countries this conformation is so common, that circumcision of the *clitoris* is practised as a religious rite. Accordingly, this vice has its proper name of *crissatio*, and *crissare*, and κλιτορίζειν, from this use of the *clitoris*; and I dare say, it is also true enough, that as a provocative to the use of the male, women have been employed to kindle each others' lewd appetites. Nor is it to be disputed, that by means of tools, women may artificially accomplish the venereal gratification. But, in this case, the use of tools is excluded by the defender's evidence, such as it is, not only by the story originally told, as mentioned in my report, but by the proof, which makes Miss Pirie declare, that she could not promise to refrain from visiting Miss Woods in bed till the winter holidays, although when she did come to Miss Woods's bed, she is represented as always performing the male functions, which surely could afford no gratification to herself if performed only by means of tools. The supposition of tools is, however, still more decidedly excluded by superior evidence, viz. the nature of the charge itself, and the nature of things; for nothing short of the gratification of mutual and furious lust, could have induced the pursuers to resort to each others' beds for the gratification, where girls of sixteen years of age were sleeping with them. Mere tribadism, where one only was to be gratified, and the other fatigued, could never have tempted to such a proceeding. And it will not escape your Lordships, that by the etiquette of the story, the visitor must have been the Tribadist, and the visited the person gratified, a most unpromising circumstance for bringing about such interviews.

See Ordinances of Menu. London 1796 p. 236. Cant. 369 & 370.

But

But if tools and tribadism are out of the question, then I state as the ground of my incredulity, not only the circumstances I hinted at in reporting the cause, but the important fact, that the imputed vice has been hitherto unknown in Britain. Neither the pruriency of corrupt imaginations, has brought it forward in works of professed obscenity, nor has the wantonness of satire ever ventured to suggest it as a ground of obloquy. I observed in my report, that when the Pathic was questioned, in Lucian, as to the means of the pretended gratification, and the interrogatories were pressed, for the avowed purpose of learning what it was that happened in the supposed congresses, Lucian was plainly unable to give the smallest satisfaction; so that, though utterly insensible to all claims of modesty or decorum, all he does is, to make the girl at last swear by Venus that she wont tell. Your Lordships, then, will judge as to the probabilities of two Scotch women, of admitted intelligence, educated, as it is established the pursuers were educated, and undertaking such a profession as they did undertake, discovering a venereal gratification which Lucian was not able to describe, and rushing into a vice which, hitherto, even the most corrupt imaginations in this country had not so much as fancied; and what is perhaps equally extraordinary, that they should have dared to disclose to each other the secret of such depraved inclinations, and that, too, while it is still problematical, whether a venereal gratification can in this manner be accomplished or not.

I do not, however, profess to decide, what effects on the bodily organs may be accomplished by lewd and corrupted imaginations; but sure I am, that I decide soundly when I hold, that nothing short of the clearest and most decisive evidence can authorise a Judge to find the pursuers guilty of a crime, while, if I may so express myself, the *corpus delicti* of a crime is still a question, and even if there were such a crime in possibility, while it has hitherto remained unknown, and even unthought of, in this part of the world.

Circumstances in which the crime is supposed to have been committed.

II. *Secondly*, As to the circumstances in which this supposed crime is said to have been committed by the pursuers, your Lordships cannot suppose, that these women were not perfectly aware, that the slightest suspicion of lewdness or indecency in their manners or deportment, was nothing short of absolute ruin to both. You must also be aware, that they were not only mistresses of the arrangement of their household; and that, under the unsuspected

unsuspected state of female intercourse and habits in this country, they could have been under no difficulty, had it so pleased them, so to have arranged that household, as to have afforded them ample opportunity of every possible indulgence, without suspicion of any impropriety. But on this subject, it is established by the very arguments of the defender herself, as well as by the evidence, that every night in the world, after their pupils went to bed, between eight and nine o'clock, the pursuers had as many hours as they pleased to meet in solitude, in a drawing-room furnished with a sofa, removed from the observation of every human being. There is no doubt that unnatural lusts have been often gratified, or attempted to be gratified, at the expence of character, fortune, and even life itself; but I believe it never was heard of, that when the gratification was completely in the power of the parties concerned, and ample opportunity afforded them to indulge in every excess, without hazard of detection, they preferred taking the enjoyment at the risk of the most fatal consequences, and under apprehensions and a controul equally irksome and alarming, to taking it in security, privacy, and without constraint. This, however, is an indelible character of the charge brought by the defender against the pursuers; it is impossible for the defender to extricate her charge from this embarrassing condition of the imputation, which it is impossible for your Lordships one moment to lose sight of; and though the defender may try to divert your attention from it, she cannot possibly meet it in argument. She does not pretend that the pursuers are fatuous; she does not allege that they are insane; yet, without fatuity or insanity, there is no state of lust hitherto known, which could account for preferring in its gratification constraint to freedom, ruin to security.

The defender, under the distress of having undertaken to maintain so inauspicious an imputation, suggested early in the cause, that the pursuers may have intended to corrupt their pupils, and so chose them to be witnesses of their vices. But this is in direct contradiction to the whole system of her evidence, and has therefore been abandoned as desperate; and she has, latterly, had recourse to a new, but not more fortunate supposition, that the pursuers were not agitated by furious lust, but ruled by a habit of unnatural indulgencies, rather sportive than impassioned or violent. But was there ever heard of a *venus nefanda* of this description? or if the existence of such an appetite were granted, would it not enhance the difficulty of conceiving that the pursuers, without

out passion to drive them, should, in the gaiety of their hearts, court destruction, while the worst of their habits might, with convenience and safety, have been indulged in privacy at pleasure? I shall add nothing more on this very weighty, or rather decisive circumstance, so decisive, that I find it difficult to conceive what kind of testimony ought to preponderate against it with a Judge, where neither reason nor talents are denied to the accused.

But did this fatal quality, inherent in the imputation itself, require any circumstances to render it more powerful with an impartial judge, this case affords one of the strongest nature; and though it is one which results from the exculpatory evidence of the pursuers, it has the character of certainty so unquestionably established in its favour, that the defender has thought it prudent to overlook it, instead of either questioning its reality, or attempting to depreciate its efficacy. I mean the differences which existed between the pursuers during the whole of that period, when their indulgence in unnatural lusts is said to have commenced, and become even a habit. The letters of correspondence printed in the State, do certainly prove, in the clearest manner, that these women were, notwithstanding mutual estimation for their talents and virtues, in a state of very marked hostility, from those jealousies and apprehensions which, it is well known, render it so extremely difficult for women, who have equal pretensions to direct a common concern, to continue for any length of time in good intelligence with one another. Miss Pirie had joined the school in November 1809; and by the New-Year, the structure of the tradesmens bills and other circumstances, had given her umbrage, and suggested apprehensions, that she was not exhibited to the public in a light as respectable as Miss Woods, and her aunt and benefactress Mrs Woods. A jealousy of this sort, it is well known, is exasperated and augmented by every trifle that occurs: And it appears in evidence, that the prudence of the parties was not sufficient to restrain them at all times from betraying their differences in presence of their pupils: And by the month of August 1810, immediately after the vacation was over and the school resumed, Mrs Woods no longer met with Miss Pirie in private, but she and her niece supped together every night in her own apartment, while Miss Pirie supped by herself in the schoolroom. And the correspondence printed betrays great keenness of animosity. On the part of Miss Pirie, she imputes breach of friendship to Miss Woods, and a disposition to degrade her, and

sacrifice

sacrifice her to her aunt's interests and passions: And on the part of Miss Woods, though of a milder and more gentle spirit, she indicates to her confidants a feeling, that her situation with Miss Pirie was insupportable, and a determination, that as Mrs Wood's retirement,—a measure she had most unwillingly yielded to, was not likely to cure the evil, a final separation would be requisite; and she makes inquiries for her own employment, with a view to that event. The more these letters are studied, the more every candid person will be convinced, that a state of such irritation and animosity, founded on such causes, and productive of such purposes, is incompatible with the habits of the mutual indulgences which form the essence of the imputation against them. According to every thing I have ever heard, unnatural lusts possess the common character of engrossing the mind that gives way to them; and I should conclude, that a state of rivalship about power and respectability, and the like, with the person who is the exclusive object of such lusts, is an incongruity incompatible with the nature of the human passions and sentiments.

But surely, whether this observation is as conclusive as I take it to be or not, there can be no doubt, that those sentiments of rivalship which the women entertained for one another, and anxiety for superior respect with their pupils, are utterly hostile to the superfluous exposure to detection of vicious indulgences, the slightest appearance of which, they knew, must subject them to the contempt of their pupils.

Character and situation of the witnesses by whose evidence the supposed crime is said to be established.

III. And now, we come to consider, in the *third* place, The situation and character of those witnesses, by whom an imputation so little credible, or rather so incredible, in all its characters and circumstances, is said to be proved to the conviction of your Lordships. In the case of ordinary facts to be proved from the observation and reports of witnesses, the matter to be proved is perfectly understood; and whether young or old, they are, of course, fully competent to appreciate the observations they may have made, and to decide on the correctness of their conclusions from them. But it is material to be observed, that the present case stands in very different circumstances. The witnesses are young females of sixteen years of age, they are, of course, possessed of some unpractised instincts, and some imperfect information, which intruct them that a venereal intercourse takes place between the sexes, and, perhaps, that such intercourse may be lewdly

lewdly imitated though the male sex is absent. But they have no knowledge of the details of a venereal copulation; they never saw its natural process; they never experienced it, and, of course, must be extremely ignorant of its ordinary accompaniments and effects; they must, therefore, of necessity, be exposed to great mistakes in judging of the indications of venereal intercourse. Young persons, at the same time, are naturally curious and inquisitive about intercourse of this sort, from their knowledge of which they are anxiously excluded by all the contrivances of civilized life. Hence, if appearances occur in the intercourse of two persons, which they do not perfectly understand the meaning of, and any suggestion is furnished them, that such circumstances are connected with the venereal indulgence, it is obvious, that they have thereby got an hypothesis by which they will be apt to solve the phenomena; and, according to circumstances, and the tendencies of their habits and dispositions, their observations of the appearances will be influenced by their theoretical notions of the motive and purpose of them, and the colourings which their imagination lend them, and the descriptions which they give of them, will be more or less assorted to their hypothesis. Like all theorists, the appearances will acquire aspects in their fancy to suit them to the theory as conceived; and the circumstances unfavourable to that theory will be unseen, overlooked or neglected; and if the theory is rude and imperfect, the opinions deduced by the witnesses may very naturally be erroneous; while, at the same time, they will predominate upon the whole strain and colour of their testimonies: And, in this case, it is not the natural congress between a man and a woman that these unpractised girls were to try the indications of, but the excesses of lust, so wild and unnatural as to be in this country unknown to the most instructed in vice. Here, the sentiments, the instincts, and the information of the witnesses must fail them in suggesting the *causa vera* of what they saw. Could murder be committed by hocus-pocus or paw-wawing, the reports of witnesses could be nothing but conjecture, formed without real grounds of inference; and I acknowledge, that copulations without penetration of the female, or the gratification of wild and unnatural lust committed in sport, and in the course of long chit-chat and whispers, appear to me to possess much of the same character,—much like charging a rape as committed *en gaieté du cœur*, and in the course of small talk.

Illustrations

Illustrations of these remarks occur in every page of the proof, and fall more properly under consideration when the details of it are discussed. I, therefore, by way of illustration, only mention at present, that both Miss Munro and Miss Cumming concur in ascribing unceasing whispering to the pursuers in their suspected venereal interviews; that both, instead of being shocked and disgusted, as the pure and enlightened imaginations of the defender and her counsel represented them to have been, considered the whole matter, till they received Mary Brown's instructions, as amounting only to an impropriety, which, though to be disapproved of, might also readily be laughed at, and excited neither horror nor aversion. In the same way, Miss Cumming's imperfect knowledge of the subject led her to suppose, that acts of copulation were attended with a particular noise, and hence, she ascribes a noise *sui generis* to the interviews of the pursuers, and compares it to what yields no sound, no more than copulation does, a finger moving in the neck of a wet bottle; and what is still more extraordinary, tells of Miss Munro having observed a curious noise, while she herself appears to know nothing of the matter. In this way Miss Munro's contaminated imagination makes the public caresses of the pursuers of one another as *being too much and unseemingly*, and has no hesitation to lend the same opinion to Miss Stirling and the other scholars, contrary to the fact; while she overlooks completely, till it is forced from her upon the cross interrogatories, that these caresses took place at reconciliations after bitter quarrels. And, in like manner, though she knew that Miss Woods was rubbed with medicines, for the rheumatism, by Miss Pirie, such is her predilection for her favourite hypothesis, that when she found the bed-clothes above herself tossed about, she gives this as the main ground of her belief that Miss Pirie was above Miss Woods employed in venereal agitations.

State, p. 82. E. 51, 62.

It is also fit, under the present head, that your Lordships should recollect the nature of our original belief in testimony, and the extreme facility with which credit is given in schools of all descriptions, and particularly female boarding-schools, to whatever is there circulated or surmised. Belief in what is told seems to be an instinctive consequence, wherever the mind is not stored with grounds for disbelief. Hence the credulity of the nursery, which continues, notwithstanding the detection and experience of thousands of falsehoods. In the public schools of boys, the lubricity of testimony is begun to be understood. There is

there

there more turmoil, less restraint, more undisguised nakedness of character and conduct, of course more knowledge and experience of character, and of the circumstances upon which testimony is to be weighed, and its evidence tried and judged of. But in the boarding-schools of girls, where their deportment is completely tramelled, and their conversations a subject of constant controul, testimony retains its unquestioned efficacy, and the credulity of the nursery is but little diminished. On this account, I believe it may be held as a matter of absolute certainty, that a young girl at a boarding-school gives implicit credit, without inquiry or discussion, to whatever is told her by her companions, unless something has occurred to induce her to question it; and that the tales of domestics are adopted with nearly equal facility. It is difficult to look into the proof before your Lordships, without perceiving striking evidences of this extreme credulity and utter neglect of all the means, however much at hand, for the detection of falsehood. Miss Munro relates, that on making her complaint to Charlotte the maid, of having been disturbed by the pursuers' interviews in her bed, that Charlotte told her, that 'one day, 'wanting something for the family, she had gone to the drawing-'room, but found both doors bolted; and upon looking through 'the key-hole, she had seen them, the pursuers, together in an
State, p. 48. B. 'improper situation upon the sofa: That the sofa usually stands 'by the fire, and on the opposite side from the window,' &c. &c.
—— p. 54. C. But upon her cross interrogatory, she depones, 'That when 'Charlotte told her of having peeped through the key-hole, the 'witness believed her; and that she does not recollect whether 'there are any key-holes in these doors or not, and that she did 'not think of looking at the doors, to see whether the story of the
—— p. 55. C. 'key-hole could be true or not.' In like manner, she depones, 'That the scholars rose between six and seven of the morning, 'and that Miss Woods and Pirie rose soon after they had gone 'down stairs, and then came themselves down stairs to the school; 'and that the first thing in the morning after the pursuers came 'down stairs, was prayers, after which the pursuers were occu-'pied in hearing the scholars the lesson they had to repeat; and 'this continued till breakfast time.' It is also in proof, that the two maids proceeded in the morning to make the beds; and yet she tells, without remark or explanation of the possibility of the circumstance, that before breakfast, about eight o'clock, some time after the two occasions when she detected the pursuers in their guilt, and they had been apprised by Miss Cumming and her

her of that detection, 'Charlotte came down to the school-room, State, p. 48. E.
'and told the witness and Miss Cumming, and Miss Stirling, that
'she had caught the pursuers in an improper situation, in the
'dressing-room, upon one of the beds: That on her going into
'the room, Miss Pirie, with her face very red, leaped out of bed,
'and Miss Woods hid herself under the bed-clothes: That Char-
'lotte said she had got into the dressing-room, but did not say —— G.
'whether the door had been bolted or not, and that she de-
'sired the deponent, and the other two young ladies, to notice
'their faces, and see what they looked like, when she came in
'with the kettle at breakfast: That the witness did accordingly
'observe them, when the family were at breakfast, and the wit-
'ness thought they seemed to avoid looking at Charlotte, and
'even to look away from her; and that Charlotte looked at them
'and made faces at them.'—'That Miss Stirling seemed to be —— p. 54. I.
'shocked at what the maid told them, and seemed to think it
'very wicked: That Miss Stirling said, She would take particu-
'lar notice of the pursuers at breakfast; and the witness, of
'course, supposes she did so, but she never made any remarks to-
'her on the subject.' Miss Stirling, however, when she was
examined, and whose behaviour upon the occasion, impressed
every person with the highest estimation of her superior candour,
delicacy and intelligence; although she remembers 'hearing
'something about the dressing-room, she cannot remember whe- —— p. 108. C.
'ther it was Charlotte or Miss Cumming that told it to her; and
'she is certain, at least rather thinks she was not present when Char-
'lotte told it to Miss Cumming.'—'That she recollects when the —— E.
'kettle was brought in at breakfast one morning, it being said to
'them that they were to look at the pursuers faces, but whether
'Charlotte was present when they were so told, she does not
'know.' And she was not able to remember having made any
observation whatever on the occasion. It is obvious, that a con-
gress at eight o'clock, in an open dressing-room, when the maids
were to make two beds in it, and when the occupation of the pur-
suers required their immediate exertions in hearing the scholars
their lessons, and that, too, at a period after their detection is
said to have been hinted to them, is one of the most incredible
and absurd imputations that could well have been imagined.
The absurdity, however, and the difficulties escape all remark;
and Miss Stirling, though urged to observe, must plainly have
seen nothing extraordinary, for she can recollect nothing worthy
of attention. Miss Stirling, too, never thought of observing that
there

there were no key-holes in the drawing-room doors, and though there had, that there was no possibility of having seen the sofa by means of looking through them.

To all these observations, I have still to add what perhaps is as material as any of them, that the whole of Miss Munro's, as well as Miss Cumming's evidence, proves, what the defender's counsel had at the outset of the cause avowed, that they were bearing witness in their own cause.

Evidence considered in detail.

IV. But, it is now full time to consider the evidence in detail; and I will set out by explaining to your Lordships generally, what I conceive is the true theory of that evidence.

In the *first* place, I hold myself entitled to assume it as an historical fact, and matter of notoriety, that the language of the Hindoo female domestics, turns chiefly on the commerce of the sexes: That the instructions of nurses to their female-infants, relate to the same subject, and are calculated to excite anticipations of its nature, even before the instincts which relate to it, have begun to exist: That the seclusion of women in the Zenanas of the more wealthy, gives birth to contrivances to supply the absence or neglect of males, and gives occasion for this purpose to a commerce with China, to an extent that is surprising; and, in fine, that it is impossible to sojourn in Indostan, without learning, by the age of eight or nine years, somewhat relative to venereal intercourse by observation, as well as instruction. In this way, only, am I able to account for the first suggestion of the hypothesis which forms the groundwork of the charge under consideration. But, as Miss Cumming had fully attained that time of life before she quitted Indostan, and escaped from the tuition of Hindoo domestics, her information may be deemed adequate to this purpose. After Miss Cumming had arrived in Britain, she had remained six years at a boarding-school at Elgin of an inferior rank, and as she appeared to be a girl of some talent, the defender's family had determined to recognise her as belonging to it,—give her the education of a young lady here, at a boarding-school,—and then introduce her into company. In these circumstances, she was placed with the pursuers; and it may reasonably be presumed, was anxious to hasten the time when she was to become a member of so very respectable a family, and perform the part of a young lady of condition. The discipline of the pursuers school, is proved to have been strict, and actively exercised; and it appears that both Miss Cumming

Cumming and Miss Munro had to endure a considerable share of its punishments.

It is proved by Miss Munro, that the first hint she derived or any thing improper in the conduct of the pursuers, was derived from Miss Cumming's information. After relating her observations, or rather her opinions respecting two interviews of the pursuers, she, on her cross interrogatory, admits, 'That upon a State, p. 50. C.
'former occasion, prior to both of the above, she waked in a
'fright, and thought that there was somebody in bed with Miss
'Woods, but could not be sure of it, nor who it was.' And upon a special interrogatory, 'Whether she mentioned that cir- —— p. 51. B.
'cumstance to Miss Cumming or to Charlotte, or had any con-
'versation with them about it? depones, That she did mention
'that circumstance to Miss Cumming, and it was upon that oc-
'casion Miss Cumming told her she had been accustomed to be
'so disturbed; and that she at the same time added, that Char-
'lotte, the maid, had told her, Miss Cumming, that she had no-
'ticed the behaviour of the pursuers.' Here, therefore, Miss Munro was furnished with an hypothesis to account for whatever she might afterwards observe, and this hypothesis was well calculated, by circumstances I have already noticed, to make her neglect, and overlook the plain and simple causes lying open to her observation, though amply sufficient to have accounted for whatever I think she truly observed: I mean the differences, disputes, discussions, and reconciliations of the pursuers; Miss Woods rheumatism, and the medicinal rubbing that it required,—the feelings of shame that the pursuers must naturally have experienced when their pupils had been exposed to any kind of disturbance or inconvenience from their private differences, together with the palpable absurdity, and of course impossibility, of suspecting that they should choose the beds of their pupils for the practice of unnatural lewdness, when, for several hours, every night, had they been so inclined, they had opportunity to do what they pleased in private, without witness or constraint.

But Miss Munro's fancy was now at work upon a different subject, than detecting the injustice or extravagance of Miss Cumming's suggestions. Whatever she observes, acquires in her eyes an extraordinary character, and what she fancies herself, she conceives is seen, and thought by her companions; and she is blind as a mole, to whatever was adverse to the hypothesis suggested to her, or furnishes a different theory for appearances. Miss Stir- —— p. 112. F.
ling, on being interrogated, 'Whether there was any thing more

' warm or improper in the manner of the pursuers, than became
' any other two friends under the circumstances of their quarrels,
State p. 113. F. ' reconciliations,' &c.? depones, ' *Not in the least;*'—' and that
—— p. 115. L. ' Miss Pirie slept with a bed-gown, petticoat and stockings;'—
' and that the only scholars besides Miss Cumming and Miss
' Munro, who appeared to understand that any thing improper
' took place between the pursuers, were the Miss Dunbars, with
' whom she had conversed on the subject.' But Miss Munro de-
—— p 56. D. pones, ' That it was the general opinion in the school that the
' pursuers caressed and fondled each other more than was con-
' sistent with ordinary female friendship; and that Miss Cum-
' ming and Miss STIRLING *had so expressed themselves to the witness;*'
—— —— H. and it required a special interrogatory to make her tell ' that
' it was on occasion of their reconciliations that they particular-
' ly caressed each other.' While, in her examination in chief,
—— p. 49. A she depones without qualification or restriction, ' That she has
' frequently through the day observed the pursuers kissing,
' caressing, and fondling each other, more than the witness
' thinks could have resulted from ordinary female friendship,
' and this both before and after the first time, when she perceiv-
' ed them in bed together, and that their behaviour struck her
' as extraordinary even before that.' I think this last passage cannot be accounted for except upon the plea set up by the defender's counsel in the outset of the cause, that it was necessary that this young lady should have an opportunity of swearing for her own justification. But whether this opinion is right or not, it demonstrates that she preferred ascribing these caresses to the unknown cause of an unnatural venereal appetite, rather than to the simple, true and natural one of the contrite and warm feelings of characters of sensibility at reconciliations after differences; and that she wished to make her examinators adopt the former opinion without giving them an opportunity to balance it with the latter. There is, however, perhaps a still more striking expression of decided prejudice in the expression of her disbelief, that there could be any private quarrel between the pursuers at the period of those interviews on which she rests her evidence of their guilt. Under the cross examination, she was too honest not to admit the frequent differences and quarrels of the pursuers; and that the coolness arising from those quarrels, sometimes lasted a week or ten days before a reconciliation took
—— p. 56. H. place, and that it was ' on those reconciliations that they parti-
' cularly caressed each other.' And then she depones flatly,
' That

That on any of the occasions when Miss Pirie came to Miss Woods's bed, the witness *did not observe* that it was for the purpose of a reconciliation, *that she does not remember, and does not think* that there was any subsisting coolness between them previous to either of the times when Miss Pirie came into Miss Woods's bed. Interrogated, Whether she thinks there might have been a private quarrel between them without her knowing it? depones, *Perhaps there might, but she does not think there was.*' Miss Munro must have felt that her favourite hypothesis was in the utmost danger from these quarrels, which she was obliged to acknowledge; and, therefore, with true blind prejudice, she takes upon her to swear, as if she had been the confidant of the pursuers, that she does not believe '*there was any quarrel between them at the period of those interviews.*' Unfortunately, however, for her pretensions, it is demonstrated by the printed correspondence, that at the very period in question, the last week of September, and beginning of October, the differences of the pursuers had attained the most decided character. State, p. 57. A.

To these remarks, it need only be added, that it is proved beyond all question, that both these young persons, Miss Cumming, and Miss Munro, very frequently incurred the punishments of the school. That Miss Cumming, in particular, received very severe rebukes, likely enough to have inspired, not only a strong distaste at the discipline of the school, but strong feelings of resentment. And, accordingly, although it appears, that both the witnesses professed great fondness for Miss Woods, to the last of their attendance at school; and that Miss Cumming, in particular, after all the pretended detections, even solicited a share in her bed, when Miss Munro happened to be absent, the breaking up of the school, and final ruin of the pursuers, instead of exciting the slightest feeling of distress, was matter of exultation and joy to Miss Cumming. —— p. 94. D. —— p. 94. A. —— p. 105. G.

My view of the case, therefore, is a very simple one. The differences between the pursuers, and Miss Woods passing her evenings with her aunt at supper, so that she never met with Miss Pirie except in passing through her bed-room to her own; and Miss Pirie never met with her in the evening, but in a similar way, naturally gave occasion to temporary whispering conversations as they passed each other's beds to their own; and as it is proved that both were subject to rheumatism, and accustomed to have the parts affected rubbed on that account, the pursuers reciprocally

ciprocally at times administered this little relief to each other; —a circumstance which Miss Munro, Miss Cumming, and Charlotte Whiffin all swear to. But Miss Cumming's *eastern* imagination and education suggests the fancy, that there was something venereal in these interviews; and Miss Munro having been apprised of this hypothesis before she had observed any of the interviews which she now swears to, greedily adopts the hypothesis, and though she hears no lewd or ambiguous conversations, nor any curious noises, finds ample matter in the disturbance of the bed-clothes, and in Miss Pirie's leaning down for the purpose of giving Miss Woods this relief, or conversing with her without disturbing the young ladies, to entitle her to bear testimony against them as guilty of gratifying unnatural lusts in her presence.

Miss Cumming again having been thus successful in gaining such a proselyte, confirms her faith by either bringing forward Charlotte Whiffin, the maid, or, as conversation with her was interdicted, reporting her alleged communications of the wickedness of the pursuers. The tale is then carried to Miss Stirling, whose elegant and intelligent mind is shocked and disgusted, while she swallows without question the reports of her companions.

In these circumstances, Miss Munro receives instruction from Mary Brown, as to the horrid nature of the vice imputed to the pursuers; and, with this instruction, the whole matter being now ripened among those young persons, and the Miss Dunbars, the defender's grandchildren, it was no longer to be concealed. Miss Cumming could do nothing else than carry it to the defender; and then, of course, she was subjected to be questioned as to particulars. And here, I apprehend, it is material for your Lordships to recollect the natural consequences of questioning particularly young persons about the details of remarkable occurrences. I have ever, in my own family, enjoined abstaining from all such examination of children, as I am confident, from long observation, that it affords the strongest temptation to invention and falsehood. Here, unfortunately, I think the die was cast. Miss Cumming reports conversations that she had never communicated to her comrades at school. She there relates none of those most extraordinary dialogues which were stated to me at the outset of the cause, and appeared to me so over-wrought, as to be incredible. Even the maid was not there alleged to have overheard any such dialogues; nor does it appear, that Miss Munro, or Miss Stirling

ever heard of those kissings, caressings, and wet noises, which make such a figure in the evidence. And I must attribute to the same source, the allegations made to me of the notoriety of the pursuers infamy among the washerwomen of the Water of Leith, and of the obloquy in the presence of the scholars, to which the pursuers had submitted from the maid, her putting out her tongue at them, after detecting them in their congresses, and reporting the fact to the young ladies. It has never been explained from what other authority than Miss Cumming's these allegations could have been made, nor why they were withdrawn, except because it was found that they were false, and could be disproved. That was not the case with the matter to which Miss Cumming is a single witness; and, to that matter accordingly, and to corresponding matter to which Miss Munro is also a single witness, is the charge against the pursuers now confined.

And now let the depositions containing this matter be examined. I state to your Lordships confidently, that I think Miss Cumming's evidence *felo de se*. I felt deeply,—I never in any case felt more distressfully, than when that young person was under examination before your Lordships. I felt as I should have done had I been sitting in another Court, and a person whose life was staked upon the issue, had, (as in former times might have happened,) been under examination. Whatever, therefore, I observed, or the Head of the Court observed, in the course of that examination, I felt the strongest aversion to adopt any measure that should not give the testimony its full swing, and let it then be left to its fate. The case, therefore, has always appeared to me, to turn entirely upon the point, Whether Miss Munro has proved any thing, that can by possibility afford a justification or apology for the defender's measures? I conceive it clear, from Miss Munro's evidence, that she is palpably a prejudiced witness,—prejudiced not merely by hypothesis that she had rashly adopted, but by a feeling of deep interest in maintaining her imputations against the pursuers. But I think she is a young woman that feels the reverence due to an oath, and that accordingly, though she has been credulous to excess, and reprehensibly rash in her answers, under her examination in chief, she has in the rest of her evidence furnished materials, which, with the assistance of the matter furnished by other testimonies in the cause, particularly Miss Stirling's, are sufficient for enabling your Lordships to form a true estimation of the circumstances she had really observed.

It will be recollected, that Miss Munro swears expressly, to her having received the first suggestion of the pursuers' being guilty of improper behaviour with one another, from Miss Cumming. Upon occasion of telling her that she had waked in a fright, thinking there was somebody in the bed with Miss Woods and herself, and that 'Miss Cumming told her, she had been accus-
State, p. 62. B, C. 'tomed to be so disturbed; and that she at the same time added, 'that Charlotte, the maid, had told her, that she had noticed the 'behaviour of the pursuers.' This communication, she swears, was prior to the two times when she is certain the pursuers were in bed together with her. Miss Cumming again swears, That her opinion of the nature of the pursuers' congresses, proceeded originally and exclusively from herself, and that Miss Munro was the first person she mentioned it to; and that her first mention of it to Charlotte, arose from Charlotte coming in when she and Miss Munro were in conversation upon the subject. And it is most remarkable, that so entirely was the hypothesis a discovery of her own, that when questioned, why she did not communicate it to Mrs Forbes her aunt, after she had attained, as she swears to certainty, and Mary Brown's instructions had taught the enor-
— p. 93. B. mity of the vice, she depones, that 'Mrs Forbes was nursing at 'the time; and the witness thought for another thing, that she 'would not *understand what the witness meant*.' Here, therefore, Miss Cumming declares herself more knowing than a very respectable married lady:—whence she has derived this knowledge, she has not been pleased to say: she swears that she did not get it from books, nor from her Indian education. But whether your Lordships believe this or not, you can have no doubt, that to her the merit of the discovery is to be ascribed, and that Miss Munro had the full benefit of this discovery at the outset of her observations.

In these circumstances, Miss Munro swears at the outset, te Miss Pirie's 'coming into bed, to her belief, with her clothes off 'on two occasions: That the one lay above the other, and tha
— p. 46, 47. 'Miss Pirie was uppermost: That she observed a shaking of the 'bed, and they seemed to be breathing high, and the bodies o 'one or both of them in motion; and that on this she spoke t 'them, and said, 'Miss Pirie, I wish you would go away, for "can't get sleep.' That upon the second occasion they lay i 'the same way, and the witness observed the same shakings o 'the bed, motions, and breathings, as upon the former occasion 'That some day-light came in; but there was no day-light, an

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'no candle, on the first occasion; and that in order to make 'them sensible she was awake, the witness coughed, and turned 'herself; upon which Miss Woods said to Miss Pirie, I suspect 'she is awake.' These events happened in the last weeks of September, and first of October; and, besides the liberty Miss Munro took, to intimate her being awake, Miss Cumming and she, of concert, complained to Miss Pirie of the disturbance; and Miss Pirie's face grew red, and she soon afterwards went out of the room; when Miss Cumming observed, 'Do you see how guilt is State, p. 49. F. 'on her face.' This, together with what I have formerly quoted, as to their pretended excessive caresses, is, I think, the fair amount of the examination in chief, together with the first communication to Charlotte, which, Miss Munro depones, was the very next morning after the second congress, when she complained, as she afterwards admits from affectation, that she was tired, from having been disturbed in the night-time, and having got very little sleep: 'That Charlotte seemed to understand her, and said it 'is a pity they could not get a man.' And then tells her straightway the story of the drawing-room, the sofa, and the key-hole.

And now let us attend to the effect of the cross-examination. As to the first occasion, she tells that she had been awake, she thinks, about half-an-hour before she spoke, and desired Miss Pirie to go away, for she could not get sleep. She heard a great —— p. 31. C. deal of conversation going on in whispers, but could not make out what was said, except picking up a word here and there, which she does not remember, and was plainly, therefore, nothing extraordinary. She afterwards acknowledges, 'That upon —— p. 52. C. 'the first occasion, when she said she believes Miss Pirie's 'clothes were off, she had no other reason for believing so, 'than from her supposing it to be in the dead of night.'—Again, 'That she is not quite positive that Miss Pirie's legs were in the —— —— D. 'bed on this first occasion, but she thinks so, and she felt the legs 'of one of them.'—Again, on an after interrogatory, 'How, as it 'was quite dark the first time, she came to know it was Miss Pirie lay above Miss Woods, more than Miss Woods above Miss 'Pirie?' Depones, 'That she did not know which of them was 'uppermost the first time. And being interrogated, How, in the —— p. 61. C. 'dark, she came to know that one of them was lying above the 'other, more than by the side of the other? depones, That her 'reason was, she could not get the clothes kept upon her.' On

a farther expiscation, however, she ascribes her opinion partly from having felt them, as they were lying close to her, and as she thought at the time that she felt both their bodies; but she acknowledges, that it was only from Miss Pirie speaking to her before quitting the room that she knew for certain that it was Miss Pirie who was there; and being interrogated, 'Whether, at 'the time of the first occasion, she had formed any opinion that 'there was any thing wicked or improper going on betwixt the 'pursuers? she depones, That she did not, and it was only from 'what her nursery maid, Mary Brown, said, she first suspected 'there was something wicked or improper.'

State, p. 61. G, I.

When your Lordships add to this, that Miss Munro had already been taught to watch for something improper by Miss Cumming, all of whose observations had before this been finished, and her communications made to Miss Munro, both of her own opinion, and the maid Charlotte's report, I think you can be at no difficulty in holding, that this congress must have been perfectly harmless,—no kissing, no caressing, no lewd words, no curious noises, no certainty that Miss Pirie's legs were in bed, or that she was not in full dress; nothing, in short, but that tossing of the bed-clothes, which the rubbing of Miss Woods's back, (of which Miss Munro had seen instances), was surely sufficient to account for, remains, on which Miss Munro has to rest her deposition; and all that you can conclude from it, is very reprehensible rashness in her deposition in chief, and equal rashness, and powerful prejudice, in making up her opinions.

— p. 52. B.

The looseness of Miss Munro's observations; the force of her prejudice, in determining her to an unfavourable interpretation of whatever she observed, and the rashness of her conclusions, from whatever occurred, are striking features of the whole of her testimony. She swears point blank, upon Lord Boyle's interrogatory, that 'upon the first occasion, when she felt the pursuers' 'bodies one above the other, she thinks they had nothing on but 'their shifts. And being interrogated, Whether it was their na-'ked bodies, or only their shifts, which touched her? depones, 'She thinks both.' Yet it is proved beyond all question by Miss Stirling, and even by Miss Cumming in her cross-examination, that Miss Pirie's night-dress, instead of consisting only of a shift, comprehended, besides a shift, a night-gown, petticoat, wrapper, and stockings. And in this passage, Miss Munro forgets, that she had already sworn, *that she had no other reason, except*

— p. 62. G.

cept from its being night, for believing that Miss Pirie's clothes were off, and that she was not quite positive that Miss Pirie's legs were in the bed. State, p. 52. C. —— —— E.

In the same style, Miss Munro repeats three or four times, as an important circumstance, 'that upon the first occasion, Miss 'Pirie said to the witness, before she went away, that she was 'not in the bed, but only standing beside it.' It appears from Mary Brown's deposition, that this was no more than the natural answer to Miss Munro's complaint, That she could not get sleep for Miss Pirie's disturbing her; and, though it was utterly dark, so that Miss Munro could distinguish nothing by her sight, she exhibits this answer in her deposition as a disguise of the fact by Miss Pirie, who, she fancies, was still in the bed. It is far more probable, however, that this fancy was merely the result of Miss Munro's suspicions having been previously kindled. For Miss Woods pleads with Miss Pirie to go away, lest she should catch cold; and though Miss Munro forgets it, she does not venture to deny, but merely does 'not recollect, whe- —— p. 55. E. 'ther or not Miss Pirie, at going away, shook hands with her, 'and wished her good night, and said she was sorry for having 'disturbed her.' A mere *non memini*, upon such an occasion, infers, I think clearly, the affirmative of the interrogatory; for with her suspicions so awakened, Miss Munro must have been positive had there been a circumstance to indicate any embarrassment on the part of Miss Pirie.

To bring your Lordships to an end of my observations upon this point, I have now to remark, that the decision with which Miss Munro infers guilt, and her total insensibility to any circumstance that could account for the appearance, strike me as very extraordinary. I say nothing as to her blindness to the natural inference, from the quarrels and reconciliations of the pursuers, or to the fair inference from the fact she swears to, That when Miss Anstruther occasionally went home to sleep, Miss Woods, instead of sleeping alone in a dressing-room, where Miss Pirie might have visited her at leisure, without witnesses, returned to sleep with the witness, nor to her saying nothing of the pursuers' ignorance that Charlotte had made faces at them, though this appears, even from Miss Cumming's cross-examination, to have been done behind their back. But what I call your attention to chiefly is, that notwithstanding her complaint of being disturbed, and the apologies she received for it, nothing but the conscious guilt of unnatural lewdness, can, in her eyes, account

for the pursuers' betraying sensibility, at being reminded by Miss Cumming, or herself, of having occasioned them disturbance or inconvenience. She quotes, as if concurring in Miss Cumming's remark on Miss Pirie's receiving a rebuke of this
State, p. 49. F. sort, 'Do you see how guilt is on her face?' though both she and Miss Cumming must have been conscious that they were guilty of gross affectation, in the complaint of over fatigue and want of sleep, and of Miss Cumming's being unable to go on with her lessons from so trifling a disturbance as they had met with, and they ought to have understood that Miss Pirie perceived that affectation, and felt the indelicacy they were guilty of, in endeavouring to make a handle of what she knew was so insignificant. At the same time, as there was certainly an irregularity on the part of the pursuers, in giving even the slightest disturbance to their pupils, by visits in consequence of their own disputes, and visits, too, at untimeous hours, on that account, she felt that she could not, with propriety, administer that rebuke to them that they well deserved, and would otherwise have received. That she should colour, therefore, with some indignation, and keep silence, was just the conduct that became any woman of worth and spirit on such an occasion, instead of affording ground for the base inference that the imaginations of these young damsels were not ashamed to draw from it.

And this leads me to call your Lordships attention as a preliminary to the more particular consideration of Miss Munro's second and last occasion on which she rests her testimony to the guilt of the pursuers, to this most important circumstance, that Miss Cumming swears in the most pointed and decided manner, that her first communication with Miss Munro, was on the day
—— p. 86. G, H, I. immediately following the *last* of the congresses, (whether four or five be their number,) that she ever particularly attended to, or had occasion to observe. Miss Cumming's first night of cer-
—— p. 81. H. tainty, is that night 'when Miss Woods came in to Miss Pirie's 'bed, and when she asked her to come in, and Miss Woods said 'no, but afterwards came in and lay above Miss Pirie,' &c. &c.;
—— p. 71. A. and Miss Cumming recollecting that she had forgot something
—— p. 72. F. about this occasion, adds, 'That the next day she bid the girls 'look at Miss Woods, for she thought she would not speak to 'her; and then Miss Woods came into the room and went out 'again, and none of the girls had looked at her;' and witness told them 'again to look at her when she came back; and when 'she came back, all the girls went up, and shook hands with her;

'but

'but when the witness went up, she turned away with her face
'quite red, and did not speak to the witness the whole day till
'after dinner, when the witness went up and spoke to her: Miss
'Munro and the witness wished to let them know that they knew
'it, and were to have spoken of it at breakfast-time, but they
'lost courage: That on the same day, when they were out walk- State, p. 72. F.
'ing, she told Miss Munro, that she would complain of it; and
'of being tired, and that she could not get sleep, and she desired
'Miss Munro to put the question to her, Did you not sleep well?
'and that the witness would answer she could not sleep, for the
'bed was shaking so; and when they came in from their walk,
'Miss Pirie was in the room, *and the witness did complain, and the*
'conversation took place, as had been agreed on. Depones, That
'Miss Pirie staid in the room for some time, but when she saw
'that they persisted in it, she left the room, with her face quite
'red; and the witness said to Miss Munro, Oh! do you see guilt
'on her face: That she does not think any of the other girls —— —— H.
'were then in the room.'

Now, if there is a vestige of truth in the story, the fact that the pursuers were intentionally apprised by Miss Cumming and Miss Munro of their opinion of their guilt, is established. I do not mean to say, that the pursuers understood the import of the communication; for I am of opinion, that the pursuers, if unconscious of any venereal intercourse, would never, from the communications mentioned, have suspected that these young persons meant to impute to them any thing of the kind. But, on the other hand, I do say, that if there had been any consciousness whatever of such an enormity, the pursuers must have understood what was really meant by these ladies. It is not in human nature, that such a piece of information affording them intelligence, that their crimes were detected, should not have been thoroughly understood, and produced the most decisive consequences on their subsequent conduct. Contempt and immediate ruin, must have stared them in the face. Here, then, my Lords, I apprehend, is an *experimentum crucis* for trying what was the state and the amount of the pursuers consciousness. If they thought that the young women were merely making a handle of the trifling and insignificant disturbance that they had met with to gratify a little spleen for the punishments and rebukes they were frequently receiving, the pursuers would naturally view it as a mere littleness of mind, best treated by overlooking it. And though it might afford some small reason for avoiding giving any farther

farther occasion for such pretences, it never could be thought even in this way, as furnishing any very serious notice for refraining from any communication with one another, that circumstances at the time might appear to require. But, on the other hand, had they felt the slightest consciousness of guilt, they must have rushed into the flames sooner than have again gone to Miss Munro's bed for the scene of their criminal indulgences.

Yet, however, to Miss Munro's bed they go, and go when the most furious lust might have been gratified in the privacy of their drawing-room, while their scholars were remote in their beds, and in sound repose. Now, what is it that Miss Munro farther depones *, as to this occasion, upon her cross interrogatory? That upon the second occasion also, she heard conversation going on between them (the pursuers) in whispers, but could not distinguish what it was, unless as above deponed to, when Miss Woods said to Miss Pirie, she suspected the witness was awake. 'Depones, That this did not appear to the witness to be 'in a higher tone than the rest of the conversation; but the wit- 'ness had at that time turned round towards them to hear what 'they would say, as she suspected that by that time they knew 'she was awake. Depones, That she thinks she was longer 'awake the second time than the first, (viz. more than half an 'hour,

State, p. 51. E.

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* Miss Munro's account of the second occasion in her examination in chief, after having been instructed by Mary Brown in the horrid nature of what was imputed against the pursuers, is as follows:—Depones, 'That some days after this, but the 'witness does not exactly recollect how long, Miss Pirie came another time to Miss 'Woods's bed; and that upon this occasion, they lay in the same way,—*Miss Pirie 'lying above Miss Woods*; and that upon this occasion, the witness observed the same 'shaking of the bed, motions, and breathings, as upon the occasion already deponed 'to. Depones, That there was no candle in the room, but some day-light came in; 'but there was no day-light on the first occasion. Depones, That from the light, 'she supposes on this last occasion, it was about five in the morning, and that the 'light was sufficient to *allow her to distinguish any person in the room*. Depones, 'That in order to make them sensible she was awake, the witness coughed and 'turned herself: That upon this, Miss Woods turned to Miss Pirie, and said, 'I "suspect she is awake;' and this was said in a whisper. Depones, That Miss 'Woods began a coughing herself, and that she said to the witness, that she had 'heard her coughing, and asked if she had been long awake, that the witness said 'she had; and that then Miss Woods said, 'I am afraid you have got a cold, if "you'll get up and go to such a drawer in the room, you'll get some barley-sugar:' 'That the witness said she did not want any, upon which, Miss Woods asked her to 'get up, and go to the dressing-room and get her some water. Depones, That the 'witness accordingly got up and went and brought the water; and that before this, 'the witness by means of the day-light had seen Miss Pirie in the bed; but when 'the witness returned with the water, she was gone.'

—— p. 47. D.

—— p. 47. I.

'hour, State, p. 51. C.), and that she had coughed several times 'to let them know she was awake.' Miss Munro, therefore, purposely betrayed, instead of concealing her being awake. Miss Munro also depones, 'That on the second occasion, the 'whispering did not stop immediately on the witness's cough- 'ing, but did soon after. Depones, That when she went to the 'dressing-room for water, as above deponed to, she went out by 'the foot of the bed, and round the foot of the Miss Edgars 'bed, after going to the side of her own to get her wrapper. 'Depones, That when she so went out, she did not see Miss Pirie 'standing between her and the window, and there was light 'enough in the room to have seen her if she had been there; 'but when she went to the bed-side to get her wrapper, she saw 'Miss Pirie in the bed, and purposely gave a knock with her 'elbow as she stooped down for her wrapper, in order to let 'Miss Pirie understand that she perceived she was there.' She also depones, 'That upon the second occasion, she is quite posi- 'tive Miss Pirie's legs were in the bed, at least she was lying in 'such a manner as to persuade the witness that was the fact, as 'she was below the bed-clothes.'—Depones, 'That upon the se- 'cond occasion, when she first perceived Miss Pirie was in bed 'with Miss Woods, her own face was to the wall, and her back 'to them; but she turned two or three times: That the first 'time she turned, there was not much light, but there was enough 'to enable her to perceive that Miss Pirie was lying above Miss 'Woods. Depones, That she had turned several times before 'Miss Woods said she suspected the witness was awake, and that 'she cannot say whether she had observed the previous turnings 'she had made or not.' Again, 'and being interrogated, Whe- 'ther upon any of the two occasions when Miss Pirie and Miss 'Woods were in bed together she either heard or saw any kissing 'or caressing between them? depones, That she did not.' And she swears, 'That she remembers upon another occasion, Miss 'Pirie coming to Miss Woods, and sitting down by the bed-side, 'just after Miss Woods had gone to bed: That Miss Woods was 'then ill, and Miss Pirie rubbed her back for a little, and that 'they had not much conversation.'

State, p. 55. H, I. — p. 56. A. — p. 52. E. — — G. — p. 62. D. — p. 52. B.

Now, my Lords, I really feel it a waste of your time, after the observations I have already made, to detain you with any formal commentary on this matter. Miss Munro was neither deaf nor blind. If she had occasionally a little slowness of hearing in one ear, she heard perfectly well with the other; and here she

is wide awake, in dawning day-light, turning and coughing, to intimate being awake, and seeing what was going on. If guilty, the pursuers were instructed in her suspicions;—if innocent, their fancy never could suggest them, and here they continue their whispering conversation, and I presume Miss Pirie, her agitations, and high breathing, notwithstanding Miss Munro's coughing and turning, and her intimated suspicions. Miss Munro, no doubt, now saw nothing in what passed that was not venereal and wicked. Miss Pirie's having crept under the bed-clothes, in order to avoid cold to her rheumatic constitution, or to converse with less chance of disturbing Miss Munro, can only be accounted for to her, by shameful unnatural lust; and if Miss Pirie chanced to rub any part of her friend for her complaints, which I think it is very doubtful if on this occasion she did, then that is confirmation strong as holy writ! I do not pretend to say how the case may appear to others; but, to my mind, Miss Munro's second occasion under the date assigned to it, and all its circumstances, is a demonstration of the conscious innocence of the pursuers. It is an argument of the same nature, (though infinitely stronger,) with that which has been well urged in their behalf: I mean the necessary inference from their steady treatment of these young women, down to the last hour they were at school,—subjecting them to the punishments of the school, however mortifying, and to rebukes sometimes severe, as occasion required. After the intimation sworn to by both young ladies, the slightest consciousness of any taint, must obviously have put an end to every thing of this kind; for surely a fortitude superhuman, and a magnanimity of virtue of the highest elevation, could not be ascribed by your Lordships to wretches so unnatural and depraved.

When I say, that I think it doubtful whether there was any of that rubbing on the second occasion, which Miss Munro construes agreeably to Miss Cumming's theory, I certainly do not mean to impute any intentional misrepresentation of the fact to Miss Munro; but I believe that the continued whisperings she swears to, are incompatible with quick breathing, produced by much bodily exertion of any kind; and I have already shewn that Miss Munro is a rash witness, jumbling different things together, and representing circumstances she considers as most material, far beyond what, upon strict examination, she acknowledges the fact to have been, and of so warm an imagination as to lend opi-

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nions to her companions, because they were her own, directly contrary to the fact. I allude to her deposition in chief, where she sets out with swearing positively to Miss Piric being above Miss Woods, and in bed with her, on both her two occasions; while, afterwards, on her cross examination, she acknowledges a total want of evidence as to these important particulars on the first occasion. I allude to her belief, that they were in their night-clothes, or had nothing on but their shifts, merely because it was in the night-time, and while it was proved that Miss Pirie wore always a cumbrous night-dress. In fine, I allude to her deposition, that it was the general opinion in the school, and that Miss Stirling had so expressed herself to the witness, that the pursuers caressed and fondled each other more than was consistent with ordinary female friendship, while both Miss Stirling, who stands so high in the opinion of every person, swears to the contrary; and while Miss Munro herself afterwards speaks out circumstances which prove to every unbiassed mind, that the pursuers conduct in this respect was perfectly accounted for, and, as Miss Stirling swears, not in the least improper or unbecoming.

In short, we have here Miss Munro with her imagination tainted by Miss Cumming's theory, but nowise instructed by her in the details, and possessed of no knowledge of her own to enable her to understand the nature and accompaniments of that *causa vera* to which she was disposed to ascribe the appearances she met with. And all your Lordships have to rest upon, is her construction of those appearances, and a description of them by her when recounting them as a justification of her theory, and for presuming to have asserted it as a fact establishing guilt against the pursuers.

On the other hand, you have here an opportunity of diving into the heart and consciences of the pursuers, and of discovering that they must have been as unsuspicious as a child unborn could be, of the horrid construction that had been put upon their conduct, and that Miss Munro believes that it indicated, and you have to decide which of these evidences ought to preponderate in the estimation of men of sense and information.

Your Lordships may, perhaps, now expect, that I should enter into an examination, in corresponding detail, of Miss Cumming's evidence; but I do not think that necessary. In the case of Miss Munro, she had got a glimpse of a theory, which she applies rashly and decides upon presumptuously, but I am willing to believe

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bona fide. Miss Cumming stands in a very different situation: She is the inventress of the theory; and she alone, of all the witnesses, takes the credit of understanding it. The married ladies are, in this respect, as unfortunate as the unmarried; and, while Miss Stirling swears, that Miss Cumming herself seemed to understand it, though she, the witness, did not; Miss Cumming
State, p. 113. I. was so sensible of the difficulty, that she states her belief, that her respectable married aunt would not have understood it. Hence, notwithstanding her success in making Miss Munro an easy proselyte, when she had been led to the dire necessity of justifying the theory to her very respectable connections, she finds it incumbent upon her to go a great deal farther in evidence of it than she had hitherto ventured. She recites conversations implying certainly very gross allusions between the pursuers at their nocturnal interviews, as overheard by her. Miss Munro and her companions had received her doctrine without any such disclosure; and though on both Miss Munro's occasions the pursuers were employed in long whispering, and though she overheard now and then a word, nothing particular enough had occurred to fix any thing in her recollection. Miss Cumming, however, was quite successful in this measure; and her reports in this way, together with her curious noises, which seem also to have been a new disclosure, appear to have produced the strongest conviction, if I may judge from the manner in which they were related to me at the outset of the cause. But I acknowledge, that their influence reached no farther; and I still think, that as they stand upon the evidence, they are, to a cool and impartial mind, utterly incredible; and notwithstanding their influence, I must say I think them miserably ill contrived. The eternal speaking suits strange-
— p. 70. H. ly with venereal congresses. The '*Oh, you are hurting me*,' seems utterly foreign to congresses between women of ordinary conformation, without tools; and the use of tools, again, is excluded by the story, as I have formerly remarked; and the whole description of quick breathings,—eternal whisperings,—violent agitations,—contemporaneous gratification of both parties,—and patting-of-butter noises, seem also utterly inconsistent with it.
— p. 70. A. The operating "*in* the wrong place for fun," is incompatible with the fury of the unnatural lust, and appears to be unsuitable to the alleged crime, on any hypothesis concerning it. The coquetry solicitations for Miss Woods, the visitor, to come into bed, and her declining, and at last yielding to them, is ridiculous; as she came there, *ex hypothesi*, to commit the crime. The conversation

sation at the bed-side by Miss Woods's visit, in order to exact a promise from Miss Pirie, not to come to her bed till the holidays, and Miss Pirie declining to make it, because she could not keep it, and their then agreeing to kiss one another in the mean time, is so absurd and nonsensical, and unaccountable, as to defy all observation. Here, they were not in bed in daliiance, but Miss Woods is at the bed-side, come there on purpose to chatter thus, and that so loudly that Miss Cumming should hear it. If such stories do not betray the invention of falschood, I do not know what can do it.

In like manner, I hold, that her account of her noises merits no discussion. The interrogatories put by the Lord President on this subject, were attended with consequences that supersede all observation. Further, every thing appears to me so little ambiguous in the character of Miss Cumming's deposition, that I think I may spare myself detail in illustration of it. Wherever there is an opportunity to compare her account of matters with those of any other, the result is nowise doubtful. When Miss Munro simply tells, that one of the pursuers, in their whispering, said to the other, '*I suspect she is awake*,' and that in no other tone than the rest of the whisper; Miss Cumming, in reporting this from Miss Munro, makes Miss Woods, in the style of detected guilt and exclamation, to have said, '*Good gracious, what shall we do, she is wide awake!*' In the same way, on occasion of observing her bed to be tumbled, she makes Miss Cunynghame answer as a matter of obvious reflection, '*Oh, it will be Miss Woods and Miss Pirie, for they were up stairs together a long time.*' While Lady Cunynghame depones negatively as to Miss Cunynghame *having had any information at school, or heard any surmises there of any impropriety between the pursuers* *. Again, the only overheard expressions in the interviews that she appears to have communicated to Miss Stirling, (and she tells us herself, she had not communicated any to Miss Munro), are, 'That they always began 'with Miss Woods asking Miss Pirie, 'Have you on your stock-"ings;' and, again, 'Not to-night, for it may awake Miss Stir-"ling, and perhaps Miss Anstruther; and that the one said to 'the

State, p. 82. E, F, G.

— p. 47. F.

— p. 73. E.

— p. 74. D.

— p. 130. B.

— p. 92. B.

* Lady Cunynghame mentioned to the Court at her examination, that if her daughter was examined as a witness in this cause, she would be excluded from her boarding school, where her admission had been found extremely difficult, on account of her having been at Drumsheugh.

State, p. 114. B. ‘ the other, ‘ Love me as I love you.” But how do these very simple and innocent circumstances appear in Miss Cumming’s deposition, so far as we can trace them? As to the stockings, they are made a remarkable circumstance, as discovered upon a
— p. 85. E. particular night, and they never were felt upon any other occa-
— p. 86. B. sion; and all the girls in the dressing-room are represented as
— p. 74. F. laughing; and, on Miss Cumming’s asking why, answering, that they were laughing at Miss Pirie coming out of Miss Woods’s bed with her stockings on, and a red garter. We know, however, from Miss Stirling, that she constantly wore stockings at night, and that Miss Cumming, her bed-fellow, must have known it as well as she did, (as she was forced to own), that she used a night-gown, wrapper and petticoat, after swearing roundly, two
— p 74. B. days before, that ‘ both the pursuers had nothing on but their ‘ shifts.’ The ‘ Not to-night, for it may awake Miss Stirling,’ might have corresponded well enough to rubbing for the rheumatism; and accordingly, in the deposition, Miss Pirie is made to repeat two or three times, ‘ Oh, do it, darling;’ and Miss Woods then complies, and makes the butter-patting noise; and,
— p. 71. A, F. in fine, the ‘ Love me as I love you,’ is converted into ‘ But ‘ you may kiss me, and I will kiss you.’

The contrast between the congresses, as described by herself and Miss Munro, is equally remarkable. Miss Munro’s are destitute of all kissing and caressing, of all butter-patting, or other curious noise, and of all lewd or improper expression; but Miss Cumming’s possess all these accomplishments.

— p. 61. A.
— p. 62. B.
— p. 47. I.
— p. 49. D.
— p. 71. H.
— p. 72. A B, C.

After these remarks, it would be insignificant to say any thing of the incompatibility between Miss Munro’s evidence and Miss Cumming’s, as to their first communications, or the inveterate prejudice, or party feeling, betrayed in various places of the deposition, and particularly in deposing with positive certainty to her having heard, in a whisper, Miss Pirie complaining Miss Woods was *in* the wrong place, not *on* the wrong place. Every two or three sentences would afford matter for dissertation, if an examination in such matters were requisite. I dismiss, therefore, this deposition, with this farther remark, that my Lord President and I concurred entirely in our opinion on the manner in which it was delivered, *viz.* that the long silences in answering the questions sometimes indicated long deliberation how an answer might operate, sometimes great puzzzle, under which invention was at work to get extricated, and that a daring attempt was betrayed to create impressions not supported by the truth of the fact; and all this

accompanied

accompanied with unaccountable concealment or forgetfulness, wherever there was room to apprehend that true or fair answers must operate in favour of the pursuers.

Before finally making up my mind on this cause, I looked with scrupulous anxiety, to discover whether there was any indication in the whole course of evidence, of circumstances that could fix a suspicion against the pursuers, of any improper measures to defeat the evidence of the defender's accusation against them. With this view, I attended particularly to the letters of correspondence relative to the bitterness of their quarrels, and to the evidence of Mrs Woods, which relates mainly to the footing on which the pursuers stood with one another at the very period of their alleged criminal intercourse. And I must, in justice, declare, that, instead of discovering grounds of suspicion, I never, in the whole course of my life read letters indicating more decisively their having been written at the period assigned to them, nor examined a witness that appeared to me in all respects more entitled to the most ample credit, than Mrs Woods. Mrs Woods depones, 'That Miss Woods told Miss Pirie, in the witness's pre-'sence, that she thought she endeavoured to make the scholars 'treat her with disrespect, and that she had put up with it for 'some time; but if Miss Pirie persisted in it, she might depend 'on it she would expose her before the scholars. But, in private, 'Miss Woods told the witness she was so exceedingly unhappy, 'she had thoughts of leaving the house without even telling Miss 'Pirie; and the witness was exceedingly alarmed lest she should 'do this, and remonstrated with her against leaving her alone 'with Miss Pirie: That she thinks this was about six months be-'fore the school broke up; and from her niece's appearance and 'expressions of unhappiness, she thinks their differences rather 'increased, particularly during the last three months that the 'school continued.' And, after relating her own determination to leave the house on account of Miss Pirie's insults, she depones, 'That after that, the witness always took her meals in her own 'room, and Miss Woods told her, that she would never again go 'to the school-room, but for the purpose of teaching; and after 'this quarrel in August, Miss Woods constantly supped with the 'witness in her room.' During this state of hostility, these two women, both rather plain in their persons, are accused of having contracted an unnatural passion for each other, and practised lusts hitherto unknown in this part of the world.

Here,

Here, therefore, there is an alternative to decide upon. The proof of the accusation, is the soundness of a theory founded, or said to be founded, on certain appearances falling under the separate observation of two witnesses, the inventor and the adopter of it; and who have been brought forward, in their own justification, in order to establish, that the imputation, which thus originated, is no calumny, but a truth. These theorists pretend to no experience of the fact, or information regarding it; nor, had they been acquainted practically with the ordinary and natural intercourse of the sexes, from which any reasonings regarding the unnatural gratifications imputed might be tried and understood. To this imputation, besides all other objections, in point of credibility, there is here offered a state of private hostility, arising from a rivalship in rule, consequence, and supposed interest, which every person knows, is one of the most rooted weaknesses of the female character, and a weakness which, when once brought into action, produces a jealousy that is incurable, and a gulf never to be passed over. Whether this state of hostility, and the theory of the witnesses, are compatible, or, if compatible, which ought to preponderate as proved, let any person of common sense determine.

I am not able to recollect any other circumstance that has occurred, which has operated unfavourably with respect to the pursuers, except the denial by Charlotte Whiffin of all knowledge of the pursuers having been suspected of improper conduct by any of the scholars, or having given any countenance herself to these suspicions. It has been thought, that as Whiffin is here guilty of falsehood upon oath, she must have been suborned by the pursuers to commit it, and that nothing but conscious guilt could prompt such a measure. Granting the premises, I think the conclusion would be a very severe and unjustifiable inference, as in this way, if Whiffin had been suborned to commit this perjury by the defender instead of the pursuers, it would be the pursuers, and not the guilty person, against whom the inference drawn would be directed, while the suborner would be rewarded with success.

But it will be recollected, that the principal story imputed by the witnesses to Whiffin,—of seeing the pursuers criminal intercourse through the key-hole of the drawing-room door,—was a palpable and gross impossibility, which the slightest inspection was sufficient to detect. I cannot therefore think, that, after having told such a palpable lie, supposing she did tell it, it can require the hypothe-

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sis of subornation to account for denying that she told it. And I also think, that a slump and general denial of all knowledge of the surmises of the young ladies, is by no means the measure that is likely to have been suggested by any person of the smallest intelligence, that could have tampered with Whiffin on the part of the pursuer. The indisputable falsehood of the key-hole story, was a basis on which such a tamperer would naturally have preferred that Whiffin should have built any inventions, with which she might have fed the fancies of the young ladies, and so account in some measure for their delusions, while the falsehood of what they were so built upon remained unquestionable. But there is nothing of this kind in Whiffin's evidence. She denies in the lump all knowledge of any other impropriety having been ever imputed to the pursuers, than their quarrels with one another; and this certainly is not an unnatural measure for a domestic of little conscience to have adopted, who may have flattered, by tales of her invention, any fancy that she saw was a favourite with the older scholars,—tales which she knew were false, and could not stand an investigation when brought upon her oath. She would be ashamed to own that she had lied, and would wish to escape both that shame, and the shame and risk of detection of attempting to justify calumnious lies, and would conclude that it was safest and easiest to deny every thing about the matter. Holding, therefore, that she did tell the key-hole lie, I think the import of her oath indicates far more strongly some such system of motives, than subornation or instruction of any sort on behalf of the pursuers. If the story of the key-hole was hers, she plainly must have told it, either to gratify the young ladies, or to divert herself at their expence; and if she had had any true stories to tell against the pursuers, it cannot be believed that she would have chosen inventing such a detectable lie, to strengthen the accusation. She surely, then, was not suborned, in order to exhibit the witnesses as dupes and fools.

I am, however, I confess, somewhat sceptical about the real history of Whiffin's communications. Miss Stirling, in the outset of her deposition, ascribes much direct communication from Whiffin in her own presence; but on hearing her evidence read over, her candour and recollection led her ' to desire it to be ' added, that at the place where she says Charlotte talked about ' the pursuers so often, that she means to say, that either Char- ' lotte the maid spoke so often, or she heard so often from Miss ' Cumming about what Charlotte said,' &c. Miss Stirling also mentions, State, p. 115. F.

mentions, that the scholars were interdicted conversing with Charlotte, an order which she herself attended to; and considering how very general the hints must in all likelihood have been, which could be uttered by young women in asking or answering inquiries relative to so extremely indelicate a subject, there must certainly have been much room for misunderstanding, and for ascribing to venereal improprieties, what was meant to apply truly to the impropriety of quarrelling. Miss Stirling, however, thinks that Whiffin's communications respected sometimes the one and sometimes the other. If Miss Stirling was not herself mistaken in this construction, Whiffin is certainly guilty of perjury, in denying ever having heard of it; but it is certainly not impossible that the fairest mind may have been here mistaken, especially if the key-hole story, and the like, only came through Miss Cumming. Miss Cumming herself admits, that, on seeing Charlotte on the street, after she had left the school, Charlotte asked her why the scholars were taken away, which was certainly a most extraordinary question indeed, though it does not appear to have excited any surprise, had Charlotte been truly the informant and the confidant she has been represented. No doubt Miss Munro, too, speaks of Charlotte's communications, as directly to herself: but I confess this does not much move me; for if Miss Cumming reported these communications, Miss Munro, I think, would readily believe and confound them in her recollections, with any hints Whiffin might have given relative to the quarrels of the pursuers. After her and Miss Cumming representing the elder scholars as generally acquainted with the pursuers' guilt, the decisive evidence of Miss Stirling, 'that no other young ladies, besides Miss Cumming and Miss Munro, and the Miss Dunbars, and perhaps the eldest Miss Edgar, ever indicated any suspicion of impropriety,' certainly creates much room for doubt, where there was so much proneness to ascribe to others fancies of their own. On the whole, however, I rather incline to believe, that Whiffin chose to flatter the young ladies, and endeavoured to get on the footing of a confidant with them, at the price of inventions; and whether the principal of those inventions was, from some feeling of conscience, so contrived as to admit of the easiest detection, or Providence so overruled it for the justification of innocence, I can have little doubt, that Whiffin must have been mainly ignorant of the nature of the imputations, otherwise she never could have inquired at Miss Cumming for the cause of taking away the scholars, or if she had made such inquiry, that

she would not have met with an indignant answer, that she herself knew the cause, and was the best evidence of it. Nothing of that kind, however, appears either from Whiffin's evidence or Miss Cumming's; both concur completely in the question that was asked, 'Why were the scholars taken away?' And this material fact, together with Miss Stirling's recollection of Miss Cumming being herself the main channel of Charlotte's reports, seems to justify the suspicion, that much that has been ascribed to Charlotte, ought to be imputed to the misconstruction of what she may have dropt concerning the quarrels of the pursuers; much also to that enlargement which all other circumstances received in passing through the same conduit of communication, and probably not a little to those powers of invention, which there is so much reason to think must have been employed so freely in the course of this melancholy business. In this way, Charlotte Whiffin's falsehood would not go far beyond that pitch of falsehood which is the ordinary vice of persons in her line of life. The true history, however, of Whiffin's conduct, appears to me but of very secondary importance. And if the defender deems it otherwise, she herself is not blameless that it cannot now be dived into; for, if instead of swallowing at once a story so extraordinary and improbable in all its circumstances, she had proceeded with due caution, and made immediate inquiry at this girl, and at all other accessible quarters referred to in that story, there can hardly be a doubt, that the truth would have been got at, or fastened down in such a manner as not afterwards to be controverted or disguised by this witness herself, or any other person.

Upon the whole, I think, that the theory of this melancholy business which I have adopted, is a fair deduction from all the appearances, and is therefore the sound one; and as it imputes to the persons concerned in it a far less degree of vice and criminality than any other that has been suggested, it is entitled to legal favour in the breasts of Judges.

Having thus examined the more material sources of the investigation in this cause, I do not think it requisite to add one word as to the consequences of the opinion that may be formed upon that evidence. If in those interviews, on which the imputations against them have been founded, the pursuers sought after gratification possessing the character of venereal in any degree whatever, their action ought to be dismissed, with full costs. If, on the other hand, credit has been given to an imputation of the most monstrous nature, which turns out to be unfounded, and upon

on such belief, though entertained *optimâ fide*, measures were taken which broke up the pursuers' school, and ruined that reputation upon which their bread, and all their comforts depended, there cannot be a doubt, that they are entitled to indemnification. The youth,—the inexperience,—the rashness,—even the falsehood of the informers,—can afford no apology to the defender, or relieve her from the obligation to indemnify which she has incurred. She took her chance of all imperfections of informers, when she proceeded upon their communications, *first*, To take measures that unavoidably led to suspicions, surmises, and reports, the slightest breath of which was necessarily fatal to the pursuers' establishment; and, *secondly*, To justify those measures, by charging against the pursuers an actual guilt, as the ground of her defamation, instead of resting it on the right of guarding against contamination from possibilities, however improbable. And the trifling impropriety of the domestic differences of the pursuers, and of those interviews at untimeous hours that they occasionally had with one another, in consequence of those differences, is obviously far too insignificant, to subject them to suffer without redress,—because corruption, rashness, malignity, and weakness, may have seized upon such matters as the grounds or pretexts of their monstrous imputations. The perfect innocence of female habits, in the intercourse of women with one another in the universal acceptation and belief of this country, affords to the pursuers the fullest sanction to have relied that those interviews could never suggest a suspicion of lewdness or indecency. They therefore can in no respect be blameable for suspicions fastened on them so foreign to their fault, and so far beyond the calculations of ordinary or even extraordinary prudence to guard against or foresee. Those that were base enough, corrupt enough, extravagant enough, or foolish enough, to form them, convert them into imputations, and so communicate them; or rather those who, when thus brought forward, gave credit to them, adopted them, and acted upon them even *in judicio*, must be exclusively answerable for the consequences.

LORD BOYLE.

[*Revised by his Lordship.*]

25th June 1811.

THIS case is certainly one of a most singular and unparalleled nature, and which imposes a most painful duty on all who are compelled to state and judge of it.

I will fairly confess that I have found it attended with very considerable difficulty, and am not at all surprised that a diversity of opinion should prevail among your Lordships, acknowledging, as I do, that different impressions as to the general result of the case, have been made on my mind at different times, in the course of my consideration of it.

Concurring in the observation that it is truly a Jury Cause, and that the evidence, when viewed in all its bearings, and with the most minute attention, ought alone to guide our judgment, I have considered it to be my duty to peruse it with the utmost care and anxiety, and I have formed from it, and the whole contents of the State, the best opinion in my power.

It is unnecessary to advert to the origin of the action, or to the different stages of its progress, as appearing upon the face of the State.

The grounds of action insisted on by the pursuers, are plain and intelligible,—and have been met with a defence rested on the *veritas convicii*,—the particulars of which are set forth in the original defences,—statement to the Lord Ordinary, and condescendence. It has further been stated in defence, that the defender was called upon by her duty to act in the manner she did.

In considering the evidence which has been adduced in this case, it appears to me, that the utmost caution and circumspection

are requisite. The very extraordinary, and notwithstanding the authorities referred to, the hitherto, in this country, almost unheard of nature of the imputation against the pursuers,—the no less extraordinary manner in which these acts of criminalty are stated to have been committed,—their previous good character and irreproachable conduct,—the excellent system of education practised by them,—their utter absence of all consciousness of guilt,—and their instantaneous and fearless institution of this action, seem to establish so strong a moral impossibility of the justice of the charge against them, as to render it indispensable, that their turpitude should be proved by the most decisive evidence. I never can listen to the argument, that in this, or any other case, the more extraordinary and unexampled the charge against a party is, the more credit is due to the witnesses who state and support it. On the contrary, I must ever hold, that the more atrocious the offence, and unparalleled the alleged mode of its commission is, the stronger and more impregnable ought to be the evidence to sustain it. And it must be confessed, that however well known the crime here charged may be amongst Eastern nations, this is the first instance on record, of such an accusation having ever been made in this country.

To come then to the evidence. The principal and leading witness for the defender, is unquestionably Miss Cumming. She is the natural grandaughter of the defender, and from her confessedly the defender's information as to the proceedings of the pursuers, was originally derived. This young woman was born in India, her mother being a native of that country, and is now sixteen years of age, having been brought to Britain when between seven and eight years old. She was at first placed at a boarding-school at Elgin, and afterwards was removed to that of the pursuers, the discipline of which appears, from her own evidence, to have been considerably more strict than that of the school of Elgin.

Miss Cumming was received in this cause as a witness *cum nota*, which implies that all objections to the *credibility* of her testimony was reserved entire. She certainly stood in no ordinary predicament, as she must have been fully aware that the whole of the defender's proceedings, which had led to the action against her, had originated solely from her communications. It seems impossible, therefore, to dispute, that this witness lay under a fearful responsibility. It was said on some occasion, that her future *status* in society was to depend on her good conduct and progress

gress at school; but she could not help seeing that her very reputation, as well as veracity, were at stake, in supporting those previous statements on which the defence of this action was rested. Independently, therefore, of her near connection with the defender, she had a strong and manifest interest in the issue of the cause.

But situated as this witness was, I cannot view her deposition as free from strong objections arising upon the face of it. I had not the advantage with other Judges, of seeing this witness examined, and can therefore judge only of her evidence as it appears in the State. I cannot, however, agree in the justice of the complaints that were made by the defender's counsel, of the long and minute cross-examinations which she underwent. It appears to me, that the pursuers were entitled to cross-examine her upon every point they deemed material, and that to arrive at the truth, in so far as they did not violate the rules of fair examination, they were entitled to sift and boult her evidence to the bran; and much light has accordingly been thrown on the testimony of this witness by such cross-examination. If it had not been allowed, and no explanations required or given, how would Miss Cumming's evidence have stood as to many particulars. For example, 1*st*, As to the servant-maid's having seen through the keyhole, as detailed in the statement, &c.—the total omission of which in her examination in chief, is by no means satisfactorily accounted for by her, as she had made additions to her evidence on the very same page of the State; 2*dly*, As to the *time* of her *first* communication to Miss Munro; 3*dly*, As to her statement of the mode in which she had felt the pursuers put down their hands, which was not given till she told the story about her leg, after the long silence as narrated in the State; and, *lastly*, As to her seeing the pursuers standing in her room in their *shifts*, so essentially altered in a subsequent examination. Many other particulars might be noticed, in which the effects of cross-interrogatories were most conspicuous.

State p. 72. F. —— p. 3.

In looking at the deposition of this witness as a whole, it appeared to me a circumstance by no means favourable to its accuracy, that there is the utmost minuteness, and even additions frequently made on recollection, in detailing the proceedings of, and even *words* used by the pursuers under the most extraordinary circumstances, while there occurs a no less remarkable want of recollection in the witness, if not an unwillingness to answer

many

State p. 67. 86. 88. many questions on points of a different description, in many passages of her deposition.

There appear also various contradictions on the face of this deposition, as well as on comparing it with those of Miss Munro and Miss Stirling, two other witnesses for the defender. The
— p. 74. statement as to seeing both of the pursuers '*in their shifts*,' as already noticed, cannot be viewed as a loose or inadvertent expression, the witness having sworn as to Miss Woods, 'but the 'witness saw her quite plainly, as the window was opposite to 'the foot of the bed.' The tardy attempt at qualification of
— p. 99. this pointed averment at the end of her deposition, where she states, that she meant 'night things in general,' must therefore be held as a contradiction of it in the most unqualified terms. She had indeed been previously compelled to swear, 'that Miss 'Pirie usually slept with a bed gown, and wrapper and petticoat
— p. 98. A. 'on,'—a statement not quite consistent with another part of her deposition, as to her feeling them *lifting up their shifts* on one occasion.

Another contradiction is also observable in that part of Miss Cumming's deposition which follows her cross-examination, as to the extraordinary way in which she states she felt the pursuers
— p. 88, 89. with her leg, which she expresses by the words, '*she is inclined to* '*think*,' &c.

It appears from the evidence of Miss Stirling, that 'Miss Pirie 'generally slept with a bed-gown, petticoat and stockings;' and
— 113. F. 114. she also swears to Miss Cumming having informed her, the pursuers 'always began with Miss Woods asking Miss Pirie,'—'Have 'you on your stockings.' But although Miss Cumming had been
— p. 86. Miss Pirie's bed-fellow so long, she states, that she never felt her stockings but once, nor knew of her wearing them at night, but from others.

Miss Cumming is not supported by Miss Stirling as to the terms of the pursuers conversations, as communicated to the latter by
— p. 114. herself; and Miss Cumming's recollection does not serve her with regard to the censures passed on her in presence of the scholars,
— 11c. F. 114. F. as detailed by Miss Stirling; while the latter affords no support to Miss Cumming's statement of *their* conversation about Miss
— p. 73. Pirie's being out of bed, but gives a contrary testimony in ano-
— p. 112. H. ther part of her deposition. Miss Cumming, at p. 74. E., is 'certain all the girls must have observed' the circumstances in the conduct of the pursuers, which she there details; but Miss Stirling swears to no such circumstance, and in fact negatives her having

having ever seen any impropriety in the conduct of the pursuers. State p. 112. F.

The evidence of Miss Munro stands also in opposition to that of Miss Cumming, in several points. In stating what Miss Munro had told her, Miss Cumming's deposition bears, that on being sent for a glass of water to the dressing-room, 'she hurried back 'as fast as she could, and just as she came in again, *she saw* Miss 'Pirie go out of the door.' And this is conformable to the account given in the statement put into the Ordinary, which it is contended must have been given by Miss Cumming. Miss Munro, however, swears, that though she had seen Miss Pirie in the room before, 'when the witness returned with the water, she was gone.' This may be considered a minute difference only; but it serves to shew pretty clearly the medium through which Miss Cumming viewed any matter affecting the pursuers. —— p. 73. F. —— p. 47. H.

Miss Cumming repeatedly states, that *she does not remember* Miss Munro's telling her of her having 'wakened in a fright,' though the latter is most positive of the fact, and details the conversation which Miss Cumming held with her upon it. On what pretension, then, is the accuracy of Miss Cumming in all respects to be rested? There appears in many passages of her evidence, a strong inclination to draw unfavourable conclusions, and upon very slender foundations, two examples of which are to be found at p. 85. G. and 91. A., and which are of themselves sufficient to lead to the most extreme caution in adopting her statements. —— p. 88. —— 62. B.

But independently of the minute observations that might be much further extended, let it be considered if the main body of Miss Cumming's testimony is of a credible nature. She details the instances of criminalty in the conduct of the pursuers, with an excess of minuteness that does not, in my opinion, render her account in any degree more credible; while she states certain particulars, which are in their nature hardly within the bounds of possibility, into the enumeration of which, however, it is disgusting to enter at any length. I allude, particularly, to the extraordinary noise stated to have been heard by her during the holidays, though situated at the time in a different part of the room, and the position she describes herself to have been in, when she made the discovery of one of the instances of the pursuers being in her bed.

Of the many extraordinary circumstances attending this alleged criminal intercourse, none appear more utterly improbable, than

than the time and manner in which it is alleged to have taken place. We are called upon implicitly to believe, that the pursuers at a period when they undeniably were on very bad terms with each other, purposely and unnecessarily (because they had for hours the lower apartments exclusively to themselves, if they had not chosen to remain separate, as is proved, in consequence of their frequent quarrels), selected for the scene of their scandalous interviews, which were always accompanied with violent shakings, a bed separated only by a thin partition from that of Mrs Wood's, the aunt of one of the pursuers, occupied at the time by a girl of Miss Cumming's years, and placed within a foot and a-half or two feet of another bed, in which Miss Stirling, a young lady of still more advanced age, then slept. It is hardly possible to conceive that any thing short of insanity could have led to such conduct, if criminal gratification was in the view of the pursuers. But we are further told, that in such a situation, the pursuers indulged themselves in those conversations which Miss Cumming has so minutely detailed. It is true indeed, that she alone gives the particulars of these disgusting dialogues, with all their point and emphasis, as not a syllable of them was heard by Miss Stirling on any of the *five* occasions on which they are said to have been held, while the expressions communicated to her by Miss Cumming herself, were in fact of an innocent and tally different tendency.

But it has been asked if such statements as are contained in Miss Cumming's evidence, could have been invented? One thing is beyond all doubt certain, that in the progress of this case, there has been some of the most manifest inventions resorted to with regard to the pursuers. When the case was originally stated to the Ordinary, it appears to have been averred on behalf of the defender, that their misconduct was so notorious, that they were hooted at when walking at the Water of Leith. But of a fact of so pointed a nature, not a vestige of evidence is to be found in the proof. So far from it, there is the clearest evidence that the scholars contested with each other, for the privilege of walking arm and arm with the pursuers when they went abroad. If there is the strongest ground, then, to conclude that such a statement must have been derived from Miss Cumming, it is not too much for the pursuers to maintain, that other inventions may have sprung from the same source.

It is also to be remembered, that the story of seeing through the *key-hole* of the drawing-room door, was manifestly an invention either

either by the maid-servant or some one else, of what is confessedly a physical impossibility, for the express purpose of injuring the pursuers.

On the whole, it does not appear to me, that the evidence of Miss Cumming stands in such a situation as that it can be safely relied on in support of this unheard of accusation.

It has, however, been said, that the testimony of Miss Munro, confirmed as it is by other evidence, is sufficient to sustain the defence. I heard her examined, and I certainly am bound to say, that I saw nothing in her appearance that could weigh against her credibility. Her situation must, however, be carefully attended to, and her whole testimony considered and compared with the other evidence in the case. She is a witness of respectable connections, and in no degree related to the defender. But it appears from the evidence, that she also was in some degree concerned in the accusation against the pursuers, and in so far interested in its support. She seems indeed to have been from the beginning much under the influence of Miss Cumming, to have derived her unfavourable impressions of the pursuers in a great measure from her; and during the latter period of her stay at school, to have become in reality the dupe of Miss Cumming's superior sagacity. It is proved by her own deposition, that at a time when she had seen nothing whatever of impropriety in the conduct of the pursuers, Miss Cumming communicated to Miss Munro what she had seen, and what had made her (Miss Cumming) quite sure they were guilty of impropriety and indecency. As to the understanding of Miss Cumming in these respects, Miss Stirling gives also very pointed testimony, and likewise to the frequent occasions of Miss Cumming speaking to her on the subject. State, p. 113. H.

It is to be observed, that previous to Miss Cumming's communication, Miss Munro had awoke in a fright, having supposed somebody was in the bed. It is therefore impossible to doubt, that such an extraordinary account as Miss Cumming had given, coming from an informer *quite certain*, must have made a very strong impression on the mind of Miss Munro, who was as totally *ignorant* on the subject. When she agreed, therefore, to watch the pursuers, it is easy to conceive that she would do so with her imagination greatly alive to the extraordinary details she had heard, and which were poured into her ears in repeated subsequent conversations. Miss Munro herself says, she became sensible of the pursuers wickedness only after having communicated

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with Mary Brown the nursery-maid; but it appears to me to be clear from her deposition at p. 62., that she had previously received a full communication from the original discoverer Miss Cumming; and indeed there is real evidence, that her communication to Brown, must have been extremely strong, otherwise she could never have so soon arrived at her conclusion as to the merited punishment due to the offenders.

As to the real nature of what passed on the *two* occasions mentioned by Miss Munro, which are said to establish guilt, even supposing them not exaggerated and described under a distorted previous impression, it is obvious that they differ most essentially from those described by Miss Cumming, and are to a certain extent of an ambiguous nature. They were accompanied by none of the caresssing and embracing—extraordinary noise—audible conversations—and remarkable expressions, so much enlarged on by Miss Cumming. Miss Munro directly negatives any such lascivious proceedings as are detailed by the latter with so much particularity. The circumstances detailed by Miss Munro, are not indeed irreconcilable to the admitted interviews between the pursuers; and if the one was occasionally in the practice of rubbing the other for the rheumatism, or of holding conversations about their domestic arrangements while reclining on the side of the bed, or sometimes even covering herself with part of the clothes, the shaking of the bed, which was an old one, according to the evidence, as well as the other circumstances mentioned by this witness, might easily be accounted for in consistency with the perfect innocence of the pursuers.

Miss Munro has indeed herself afforded the clearest evidence that Miss Pirie might be and actually was in Miss Woods's room, and even sitting on her bed-side, on more occasions than one, for purposes perfectly innocent and laudable. She states in her deposition, p. 51. G., that on an occasion in which she was awakened in the dark, and Miss Pirie was at Miss Woods's bed-side, she heard them conversing about Miss Stirling and Miss Pirie's brother-in-law, she having afterwards mentioned the subject to Miss Pirie herself. Miss Munro, however, states, that on this very occasion, she took for a reality what was only a dream, a circumstance which might of course have happened to her as well on the other occasions she describes. In another passage of her deposition, at p. 52. B., she swears to Miss Pirie having on another occasion sat down on the bed and rubbed Miss Woods for the rheumatism, after she had gone to bed; and that at another time

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Miss Pirie came into the room before Miss Woods got up, and made her a present of a Bible.

These interviews, which unquestionably were innocent, establish in the clearest manner, that Miss Pirie was in the practice of coming into Miss Woods's bed-room, and of conversing with her, and occasionally rubbing her when complaining. But if they had not been thus demonstrated by the testimony of Miss Munro herself, to be totally remote from the slightest criminal purpose, they might have been pressed forward to swell the catalogue of visits of a totally different description. Had Miss Munro not obtained full conviction of the true purpose of those visits of Miss Pirie, but had merely ascertained the fact of her having been in the room, and sitting on the bed in the dark, it is impossible to doubt, that if they had followed the communications of Miss Cumming, they would have been brought in judgment against the pursuers. But Miss Munro herself establishes a fact, which is most essential to the innocence of the pursuers, by proving, that though Miss Woods, while Miss Anstruther, one of the scholars, remained at school, was in use to sleep in the same apartment with her, yet on Miss Anstruther's occasional absence, she returned to her own bed and slept with the witness. Now, if the pursuers were in reality actuated by the propensities ascribed to them, here was the most favourable opportunity of indulging them without any risk of detection; and yet on these occasions, Miss Woods, instead of continuing to occupy the dressing-room, is proved by Miss Munro herself, to have uniformly returned to her own apartment. This I must consider as affording real evidence in favour of the pursuers.

In Miss Munro's deposition, it will be found that there are various inconsistencies and contradictions. In particular, when speaking of the *first* occasion, she depones, 'That on the first 'occasion when she says she believes Miss Pirie's clothes were off, 'she had no other reason for believing so, than from her suppos-'ing it to be the dead of night.' But in a subsequent passage, she depones, 'That upon the first occasion when she felt the 'pursuers bodies one above the other, she thinks they had no-'thing on but their shifts. And being interrogated, whether it was 'their naked bodies or only their shifts which touched her, de-'pones she thinks both.' It is impossible to peruse her deposition without observing that she is strongly prejudiced against the pursuers, in drawing conclusions in which she is by no means

State, p. 52. D.

—— p. 62. F.

—— p. 49. B.

supported by Miss Stirling, who had the same opportunities of observation. The latter does in one essential particular, indeed, flatly contradict Miss Munro, who swears that Miss Stirling had expressed herself of opinion, that the pursuers caressed each other more than was consistent with ordinary female friendship. But Miss Stirling, it is clear, never did nor could so express herself, as is evident from the tenor of her deposition, p. 112. F. There are other parts of her deposition, at p. 48. E. and p. 55. A., in which Miss Munro's statements do not tally with the account given of the same incidents by Miss Stirling at p. 108. In the above respects, therefore, Miss Munro is not confirmed by the evidence of Miss Stirling.

State, p. 50. D.

With regard to the deposition of Mary Brown, it amounts to no more than the hearsay of Miss Munro, who appears to have laboured under the strongest influence of prejudice, created in her mind by the representations of Miss Cumming.

Miss Stirling, who was the eldest of the school, and is a most unexceptionable witness, has deponed of her own knowledge, to nothing whatever to the prejudice of the pursuers. Although she was no doubt sufficiently instructed by the information of Miss Cumming and Miss Munro, Miss Stirling's testimony is in reality to be considered as in favour of the pursuers, unless the account she gives of the loose conversations and disrespectful language of Charlotte Whiffin, the maid-servant, can be held as evidence. Her communications with Miss Cumming, seem, however, to have been much more frequent than with this girl, with whom indeed she says ' she had very little conversation,' p. 115. A. When it is recollected that Miss Stirling had almost the same opportunity of observing the conduct of the pursuer as Miss Cumming, and that she positively swears she observed no instance of impropriety; it seems impossible to deny, that her testimony is entitled to the greatest weight in this cause.

The testimony of Mrs Woods, who never observed the slightest instance of impropriety in the conduct of the pursuers, is likewise entitled to attention in a case of this nature.

It does not appear to me, that either party can build much upon the evidence of Charlotte Whiffin. She is certainly not free from suspicion, as she evidently has endeavoured to conceal her having spoken in disrespectful and contemptuous language of her mistresses. Those loose expressions which she appears to have indulged in, cannot be set up in opposition to her evidence upon oath. She could not have missed observing the

the inclination of Miss Cumming and Miss Munro, the latter of whom positively states, p. 57. E., that ' Charlotte the maid, never ' made any remarks to her as to any improprieties in the pur- ' suers conduct, until the witness mentioned to her that she had ' been disturbed on the second occasion, on the morning there- ' after.' It was by no means surprising, therefore, that, adopting their statements, Charlotte Whiffin may have chosen to encourage them, by detailing and exaggerating circumstances in no degree inconsistent with innocence.

If the evidence to which I have referred is to be considered as leaving the conduct of the pursuers in doubtful or equivocal circumstances, they are surely entitled to the benefit of the unexceptionable body of testimony, which has been adduced in favour of their past lives. The excellent characters which they sustained down to the proceedings which led to this action, have been established by a cloud of most respectable witnesses, who have born the most decided testimony to their moral, virtuous and religious conduct. In every accusation of an atrocious nature, the general conduct and demeanour of the accused, must enter materially into the question of guilt or innocence; and certainly in the present case, the pursuers are not to be denied the benefit of any legal or fair presumption.

The defender has indeed referred to certain melancholy instances of human depravity, which have appeared amongst persons who previously enjoyed irreproachable characters. There exists, however, between the two cases referred to and the present, the most marked distinction. In the former, the guilt was in fact confessed by the accused having instantly abandoned their families, their friends and their country. But has any such consciousness of crime been discoverable in the proceedings of the pursuers? Is it in the scene so impressively described in the evidence of Lady Cunynghame—in the emphatic language of the note addressed by Miss Pirie to the defender's daughter—or in the instantaneous institution of an action for the vindication of their characters, that we are to find such indications of guilt as the cases referred to, unquestionably afforded? The pursuers are in my opinion justly entitled to found on every step of their conduct since they first heard of a suspicion against them, as real evidence in favour of their innocence.

But there is another circumstance in the conduct of the pursuers at an earlier period, which appears to be in no degree reconcileable

concileable with the idea of their being conscious of impropriety, and far less of the guilt imputed to them. It will be recollected, that according to the story told by Miss Cumming and Miss Munro, the pursuers must have been fully aware that these young ladies were completely apprised of their intercourse, not only by the discovery of their being awake on the different occasions mentioned by them, but by the direct complaint that was intentionally made in the school-room, to let them know they were detected. Now, subsequent to these discoveries, is there the slightest evidence of any change whatever in the deportment of the pursuers towards Miss Cumming or Miss Munro? Was any attempt made either to remove or lull those suspicions, which must have appeared to the pursuers to have taken possession of the minds of those young ladies? Nothing of the kind appears from beginning to end of the proof. But on the contrary, the same strict discipline and regular adherence to the rules of the school, were continued to be adhered to with regard both to Miss Cumming and Miss Munro, down to the very hour of their departure from the house. Such conduct, while it is perfectly consistent with the consciousness of innocence, appears to me to have no resemblance to the proceedings of guilt.

It has, however, in the *second* place been maintained, that supposing the defender to have failed in proving her condescendence, she was entitled in the discharge of her duty to act in the way she did.

This part of the case appears to me to be attended with some little difficulty. But while I acquit the defender of all malicious purpose, when I consider the *nature* of the information she had received, that it came from a solitary informer, and that the inevitable consequence of her acting as she did, was to produce the ruin of the pursuers, I must hesitate a good deal more than I do at present, before I can deny reparation to those, against whom a charge of such enormity has not been proved by satisfactory evidence. It can never be forgotten, that in reference to their situation in life, no greater crime could be imputed to the pursuers. It is no apology, therefore, to say, that the accusation was couched in general or ambiguous terms. The defenders stating that she had serious, or very serious, reasons for removing her grandchildren, coupled with an advice for the immediate removal of the children of those to whom her communication was addressed, necessarily set every imagination afloat, and consequently

sequently led to the speedy disclosure of the real accusation. Had the defender merely withdrawn her grandchildren from the school, she was unquestionably entitled so to do. But I cannot think, that on such information as she had, she was entitled without inquiry, or any demand of explanation, or further light, to put down their school, and thereby annihilate the future prospects of the pursuers. She put her case upon the authority of Miss Cumming, and on its weight, and the rest of the evidence she has adduced, she must now stand. It does not, however, appear to me, that the defence has been made out by such evidence, or supported on such grounds of law, as ought to be sustained.

LORD JUSTICE-CLERK (HOPE.)

[*Revised by his Lordship.*]

25th June 1811.

I MUST be destitute of all feeling, if it were necessary for me to speak of the painful nature of this cause. I never saw a cause so disgusting, view it in either light. But I am so far in a different situation from some of my Brethren, that I have not one doubt or suspicion on my mind. I have no more suspicion of the guilt of the pursuers, than I have of my own wife.

I lay out of my view the question as to the physical impossibility of the thing charged, although I have great doubts of the possibility of the fact, as charged. But though it were an event in the course of nature, I cannot separate crimes from the manner in which they are alleged to have been perpetrated. It is, as if I were told, that a person heard thunder playing the tune of God save the King. If you say that the pursuers have committed a crime, I may suppose it, if stated to have been committed with a man. If you accuse them of gross indecency, I can suppose either of them capable of it. But if you tell it under circumstances that are incredible, I don't care what the fact itself is.

One point stated by the defender is this. It is said, look at the defence: It is merely a general charge of gross immorality and shameful indecency; and it is inferred, that proof of any impropriety or indecency is sufficient to sustain the defence. This was not Lady Cumming's own notion of the defence. She stated the particulars of her allegation in the condescendence. That is the defence. An allegation of gross fraud and shameful circumvention generally, would not be a relevant statement to be allowed

to go to proof. The party must condescend on the particulars: The facts must be specially set forth: If those facts are not proved, the general defence goes for nothing: We must draw the conclusion from the facts stated and proved.

These Ladies were accused of gross immorality and shameful indecency, by the saying and doing certain things, as specially set forth in the condescendence. There the facts were so gross, incredible, brutish, beastly and absurd, that I could give not the slightest credit to them. But still, I must have believed them, if well proved. But when I saw that the supposed confirmation of the story, by what was attributed to the maid fell to the ground, and also saw something by which to account for the general circumstances, the whole story lost its coherency. The evidence proposed was that of two girls, regarding facts which they did not understand, and they were to be corroborated by the maid-servant, who might be supposed to understand a little more about the matter. How great would have been the corroboration, if Charlotte had confirmed their statement, especially if what she was said to have told them had been possible. But the thing was impossible. We saw this with our eyes. We who visited and inspected the house, saw that the story of the key-hole was physically impossible. Suppose the maid had sworn that she saw the pursuers through the key-hole, we must have sent her immediately to jail for perjury. But she has positively sworn the reverse. And now, the expected corroboration is totally done away, and the failure of it must affect the rest of the evidence.

When I see invention at work in one quarter, I must be prepared to expect it in others. Yet we are told, that it is impossible that Miss Cumming or Miss Munro could have invented the story of the key-hole. But there is evidence of invention by Miss Cumming, and the most brilliant invention. I allude to her statement about the *curious noise*. How does she describe it? Not by any other noise that she ever heard. To suit the occasion, she invented a noise which she admitted she never had heard. There was no hesitation in her answer to the question. She at once said, that *the likest thing* she could think of, was putting her finger into a wet bottle. Is not that an absolute lie? 'The likest thing,' —it was implied in this that she had tried it. But if not, it was a mere invention,—an effort of imagination. We have here her own oath to her invention. And why is she to be believed, when she speaks of one noise, when you find her swearing falsely in regard to another?

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There is no difficulty to understand what she meant. It is most significant. She is both more knowing and more ignorant than some of your Lordships imagine. She has read or heard a a good deal of the intercourse of the sexes. I believe she is ignorant, as being innocent in her own person. But she has conceived a pretty accurate idea of the act of copulation in its completion, and has imagined that it was attended with a *wet* noise, if I may so express it. The chief thing is, that this shews invention,—a habit of imagining. She says, she heard it in the next bed. Miss Stirling never heard it, Miss Munro never.

There is another difficulty, in the mode in which the crime is alleged to have been committed, which I cannot get over. And I know no rule of law to oblige me to believe a thing, though it should be sworn to by two witnesses, which is stated to have taken place under circumstances that are absolutely incredible. But the thing is stated to have been committed under the circumstances of improbability which have been already spoken of. Miss Woods comes from the dressing-room. This was not necessary. Again, where was the necessity for interchanging beds? Or why should they have gone to one anothers beds at all, when they had two hours before bedtime, after the scholars were asleep. We have them quite aware of the danger of discovery. Then we have a dialogue: One is invited to come in: She answers, '*No*,' &c. 'We 'may awake her,' &c. And yet all this is stated to have been so audible, that Miss Cumming correctly distinguishes between the words *in* and *on*.

The character of the pursuers has been proved; and a great deal has been said about it by the defender. But there is not a prostitute so blasted, as these women are described by Miss Cumming. She makes the one say to the other, You are *putting it into the wrong place*. I hope never to see such evidence again. I am not one who thinks, 'he seldom errs, who thinks the worst he 'can of womankind,' &c. I never saw a prostitute, who did not prefer to be treated with decency. Another part of the conversation is, one says, 'What are you doing it for?' and the other answers, 'For fun.' We are called upon to believe this, as spoken *audibly*, by persons described as afraid of detection, and in the same bed with a girl watching. I myself put the question to Miss Cumming, whether she was sure of the words '*in* the wrong 'place,—whether they might not be '*on* the wrong place.' I recollect the decision, the teeth and bitterness with which she said, 'I am *quite sure* it was *in*.' I think there is here a physical impossibility.

possibility. If such a thing had been said, there would have been no emphasis on the word *in*, such as to enable a person in such circumstances to swear that it was *in* and not *on*. Speaking audibly in this Court, if I use the expression in a common way, you cannot tell with certainty which word I pronounce; but if I speak it in a *whisper*, who could tell or pretend to swear to it?

But, if I believe this to be invention, can I believe the rest? 'Promise me one thing,' &c. 'but you may kiss me and I may 'kiss you.' &c. Where was this to happen? In some other place. This is Miss Cumming's account of it to us. But what is the account which Miss Stirling gives, of Miss Cumming's account to her of this supposed conversation? She says, *first*, That Miss Cumming said, that the conversation 'always began about the 'stockings.' Miss Cumming told us nothing of this. But then, what are the material words as told to Miss Stirling? '*Love* me *as* '*I love you.*' There is the true story. If you go to Brown to confirm Munro, will you not take this, which is the true account? The meaning is plain, 'Love me as I love you, and we shant then 'quarrel about Mrs Woods.' Cumming changes it into *kiss* me, &c. which entirely changes the meaning. Otherwise, she clearly conceals what she told to Miss Stirling.

Another material part of Miss Cumming's testimony, is her statement with regard to the situation of the legs. I can make nothing of it. But it is manifest, that she changes from her first account of the matter, for a gross reason. The fact that Miss Pirie had stockings on, had come out, and could be proved by others, and she felt herself in a gross contradiction.

I must now allude to what I consider a physical impossibility. She says, that Miss Woods was lying above Miss Pirie, and that she felt them both pull up their shifts. To say nothing of the petticoat, it must be remembered that this relates to women's shifts reaching to their feet, and having no opening. Lay two women flat above another, and I venture to say, that they cannot then pull up their shifts. Another thing is, that, if this dalliance had been going on, the shifts would have been up before? In short, the whole circumstances detailed by Miss Cumming, appear to me grossly incredible. But I shall not go farther into the particulars, which have been already spoken to.

If I had sat as a single Judge taking this proof, I should have committed Miss Cumming for prevarication, and I believe that was the feeling at the time of all my Brethren who attended the proof. I felt inclined to move it: and I fear I was swayed by too much respect

respect for the family of Lady Cumming in not doing so. Lord Armadale and myself, sitting in the Justiciary Court at Glasgow, sent a woman to the pillory for less prevarication than Miss Cumming was guilty of. And I cannot help observing, that any hesitation which she shewed in the course of her examination, was *never* in the points of *indecency*, but always when she was called on to reconcile her own contradictions. She was *thinking* and *contriving*.

With regard to her motives.—I am not sure if she was aware of all the consequences, or intended at first that it should go so far as it did. Even to get from school was a motive, which is an object to a girl like her. This motive I can see. Another, is the love of tittle tattle; to have something to say against her mistresses. There is also the motive of conversing with the maid, when forbidden. Miss Stirling tells, that she had very little conversation with Charlotte, and that she even thought it very improper when Charlotte spoke disrespectfully of her mistresses. This shews the difference between Miss Cumming and her. I would rather believe Miss Camming, and almost Lady Cumming herself perjured, than I would believe the statement about *the wrong place* to be true, especially with regard to women of good character. This is stated of women alive to all the fine feelings of Christian morality,—who are real Christians, if there can be evidence of private belief:—see Miss Pirie's letter to Mrs Hamilton. To commit sodomy with a woman,—a double unnatural crime! Can it be believed of such persons? Is character, and such character, to be of no weight here?

But my hypothesis is, that there is no perjury in Miss Stirling, nor in Miss Munro, strictly speaking. At the time of the innocent meetings, Miss Munro suspected nothing. She suspected nothing till Cumming told her. She swears, that she is not sure whether the innocent occasions were before or after the others. This is odd enough. But we must suppose that they were before Cumming spoke to her. She may have been partly dreaming.

What resolves the whole matter is, that they had a ground for their hypothesis. The pursuers did come to one another's beds. But there is no end to the influence of mere suspicion, when it is taken up without knowing the whole circumstances. I can recollect to have been myself in situations, which, if seen by a third person without knowing the real cause, might easily have been worked into a source of very extraordinary suspicions. (Mentions an example). Are there not circumstances here to explain every thing? I am surprised that the statements of the

pursuers should be turned against them. Are they to have no credit for not putting Miss Cumming in the summons as a defender, as they undoubtedly might have done, and then there would have been no evidence against them at all? I confess, I doubt if their advisers are relieved of responsibility for not doing it.

If the women had denied that they were ever in one another's rooms, we could only have discredited the statements, by supposing the whole to be invention. But when they account for some circumstances, is it not material? Is the admission to be turned against them? Take the case of a man found with his hands bloody, beside a murdered man. It is accounted for by the fact, that he was the first who came to the dead man's assistance. The explanation of the suspicious circumstances accounts for the whole as proceeding from a distorted imagination, by which a person works himself up to be certain of a fact which never existed at all. I think the same is to be said of Miss Munro. If we suppose that they came to one another's beds for the purpose of conversation, they could not find room without leaning over one another. Munro says, that on one of the two occasions, she is not sure whether Miss Pirie was even within the bed or not.

One circumstance appears to me of great importance. I mean what occurred at the interview of Lady Cunynghame with Miss Woods. Of Lady Cunynghame's considerate conduct and delicate behaviour, it is impossible to speak in terms of too great praise. Suppose that Miss Drysdale had gone alone; we might have had an allegation of indecency with Miss Drysdale. Might not this have happened on such grounds as are here insisted on? But the circumstance as it actually took place, shews what was the natural expression of feeling in Miss Woods when she was in distress. And it is the natural way with women. I say farther, that, according to the known habits of women in this country, there is no indecency in one woman going to bed with another.

Miss Woods was placed in a very unfortunate situation. She had an aunt to whom she owed every thing. Miss Pirie saw that, and made allowance for it. At last, it was settled, that Mrs Woods should leave the house. That to a certain degree removed the cause of quarrel. But, in the mean time, Miss Woods, in the disputes, was obliged to take the part of her aunt. These disputes appear to have been the whole cause of the meetings on which the charge is founded. But it will be observed, that it is not said that they *systematically* took that time to discuss family

family affairs, but only that it happened on a few occasions, after their disputes had run high.

If the fact is doubtful, we must interpret for innocence; so would a jury. It is not necessary for the pursuers to contradict the testimony of Cumming by other witnesses. It is incumbent on the defender to confirm it by other witnesses. But this has not been done. On the contrary, the whole proof is a mass of contradiction. Miss Munro is contradicted by Miss Stirling, and they are all contradicted by Charlotte the maid. You have also the evidence of Miss Cunyngham in some sense. Miss Cunyngham must have seen what is said to have passed in the day time, if Cumming speaks true. The witness was cited, but she was not allowed to be brought. I doubt if I could have given a warrant to oblige her. But Lady Cunyngham must have learned it from her, and could have told it. On account of the general contamination, Miss Weston refused to admit into her house two other girls who had been in the school, for this reason alone. I doubt if Lady Cumming, even if she believed all that she says, could have done a greater injury by leaving them all there.

I must advert to the impenetrable hard-hearted silence of the defender on the subject. I doubt much, if upon an attempt at such explanation as has since been given, all harm might not have been prevented. If a similar explanation had been given to Lady Cunyngham, I am morally certain she would have left her daughter at the school. I believe that the defender acted on virtuous impressions. But, notwithstanding this, I am clear of the *animus injuriandi*. I very much disapprove of Lady Cumming's letter to Mrs Stirling. It is very near subornation of perjury. Nothing but a blindness to propriety, and a determination to believe what Miss Cumming had told her, right or wrong, could have led her to such conduct. Why should she not have inquired at Charlotte concerning the thing described to her? If she had done so, she would have found immediate cause to distrust Miss Cumming's statements.

Many other things occurred to me which I could not bring my mind to put down in notes. I am clear that the defence is not made out.

* *N. B. These Notes are very imperfect, for the Lord President having taken the proof himself, had the whole evidence so fresh in his recollection, that he spoke without Notes, and on being referred to long afterwards to revise these Notes, had no materials for doing so; but he approved of these Notes as far as they go.*

LORD WOODHOUSELEE.

[Revised by his Lordship.]

26th February 1812.

THIS is the most painful question on which I have ever been called on to form an opinion since I have sat as a Judge of this Court, and when this cause came to be decided by your Lordships in a former stage of the proceedings, I sincerely congratulated myself that I was relieved from that disagreeable necessity. I most earnestly wish it had still been in my power, to escape from a duty so truly painful to the mind, as that which my removal to this Division of the Court has now imposed upon me; but as that is impossible, I must prepare to discharge it in the best manner I can. I am conscious to myself, that I have endeavoured with an earnest and upright intention to arrive at a sound and mature judgment on the case which is now before us,—and I am happy at least to think, that the opinion I have formed is free from all manner of doubt; however much I may regret the consequences of that opinion to a person whom I sincerely esteem and value,—a person whose worth I know, and with whose family and connections, I myself and mine, have been united by the strongest bonds of friendship and personal regard, for more than one generation. If that respectable matron to whom I allude, and on whose side all my natural prejudices (if I were conscious of any in this cause) must have lain,—if she has erred, as I think she has grievously and unfortunately erred in this one unlucky exercise of her judgment, sure I am it was a virtuous error; it was an error proceeding from a worthy principle, and if it cannot be deemed altogether venial, where her decision was thus rash and precipitate, and its consequences of so severe and cruel a nature, I will at least hold it so far the subject of excuse, that it had its origin in a mistaken sense of duty, and in an earnest desire

to discharge what she believed and felt to be a moral obligation.

In forming my opinion upon this cause, I rest upon one great principle, which I hold to be fundamental in the law of evidence,—That in proportion to the improbability of any alleged fact, from its being contrary either to the usual course of events, or to the ordinary tenor of human conduct; in proportion as the alleged fact contradicts or stands in opposition to those natural feelings and passions, which are the motives of the conduct and actions of men, so, in proportion, must be the strength and weight of the evidence, to render such a fact credible. One would naturally imagine, that a rule so essential in the consideration of every question of evidence as this, was not very likely to be disputed, since every man must be conscious to himself, that he regulates his belief according to that rule in every case whatever, that depends on human testimony. It is a law of our nature, that we believe upon much slighter evidence a fact that is natural, and, therefore, likely to have happened in the circumstances of the case, than a fact that is unnatural, and therefore not likely to have happened. I own, therefore, it did somewhat surprise me, to find this law of moral evidence controverted in the Answers to the Petition. But this is done so very feebly, (indeed just in a single sentence), that the ingenious counsel seem to have been conscious, that at the moment they were endeavouring to shake that law of evidence, they were maintaining a doctrine contrary to the sense and feelings of all mankind; nay, contrary to their own feelings, and what they themselves have practised in this very paper, whenever they found it necessary to discredit the facts or statement of the pursuers. 'Such a fact,' say they, 'cannot be believed; it is *contrary to all probability*.' And yet when this mode of arguing is employed against them, then they tell us it is a *fallacious mode of reasoning*, and that no attempt can be 'more unavailing, than to discredit a fact resting on the positive 'testimony of witnesses, by reasoning *à priori* against the proba-'bility of its existence;' for this, they say, 'is nothing better 'than opposing pure hypothesis to actual experiment.' Now I hold, on the contrary, that we never do in any case exert our judgment on the veracity of the testimony of witnesses, without taking into account the *probability* or *improbability* of the fact to which the testimony applies; and we invariably require a greater or a less degree of evidence in proof of such a fact, just in the exact proportion of its agreement or disagreement, with what usually happens

happens in the common course of things. To say, therefore, that it is an unavailing attempt to reason *à priori*, on probability in opposition to direct evidence, and that we ought to explode such a mode of argument, is just to say, that in judging of evidence, we ought to throw out of our minds that *criterion* of *common sense*, which is necessary for the weighing of all evidence whatever.

I, therefore, think it safe to build upon this as a principle in the law of evidence that cannot be controverted, That the more improbable any fact is, the stronger must be the evidence to overcome that improbability, and to render such a fact credible.

It will follow as a necessary consequence from this principle, that to render an improbable fact a matter of belief, the evidence of it must be clear, unambiguous, consistent with itself, and so conclusive as to exclude the supposition of the fact being otherwise than what the evidence points at; for if it fails in any of these requisites, much more if it fail in *most*, or in *all* of them, it is plain, that when applied to a fact which is in itself unnatural and improbable, it becomes no evidence at all sufficient to produce belief.

Now the question which we are to decide, turns upon the evidence of a charge of facts which are confessedly most improbable in themselves, and out of the ordinary course of things. Let us examine a little particularly what are those facts which in this case we are called upon to believe; and here, I think, there is such a mass and complication of improbabilities brought together in one story, as no ordinary force of testimony, even if that testimony were of the purest and most unsuspicious kind, is sufficient to render probable. As this complication of improbabilities is a most important feature of this cause, I shall be excused for analyzing it somewhat particularly.

1*st*, It is an improbable fact that two women, whose education appears to have been strictly virtuous, and who seem to have possessed the strongest impressions of moral rectitude and duty; that two women, who, before they came to live together, had so conducted themselves as to gain the highest character from their separate acquaintance, as possessing such exemplary good conduct, and such strictness of principles, as fitted them, in the opinion of the most respectable families, for being the conductors of a boarding-school for the education of young ladies;—a duty of all others, where the greatest purity of morals is required. It is certainly a most improbable thing, that having earned this high character, by their good conduct while living separately, they should no sooner

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enter on this joint undertaking, for which they had earnestly endeavoured to render themselves worthy of the public patronage, than they should all at once throw off the mask, which they had hypocritically put on, and worn for a series of years; and should exhibit the basest and foulest impurity of passions—the most shocking and unnatural species of debauchery—an intercourse which even the most abandoned wretches, who make no pretensions to common decency, and live in the habitual disregard of all the laws of religion and morality, would hold it infamous to be suspected of—a crime that we see, from the proof now before us, their own sex regard with such abhorrence, that they declare, if guilty of it, they should be *burnt*—put to death like monsters.—This, to say the least of it, is an *improbable supposition*.

2d, It is a very improbable supposition, that two persons confessedly possessed of good sense and a sound understanding, who knew, that in the line of life they had chosen, their bread absolutely depended on their virtuous, decent, and exemplary conduct, while the slightest departure from such conduct, was utter ruin and disgrace, should blindly and madly embrace that ruin, and sacrifice their means of subsistence, their welfare, character, every thing, for some beastly, sensual gratification, which must with them have outweighed every other earthly consideration.

3d, Moreover it is a circumstance certainly not easily to be believed, that where persons are abandoned to unnatural lust to the degree of *furor* and frenzy, (for it is nothing short of it that we are here called to give credit to,) that such persons should quietly, zealously, assiduously, and painfully devote themselves every day, and through every hour of the day, to the discharge of their duties to the young creatures under their care, and labour, with unremitting pains, to impress upon their minds the sacred truths and duties of religion and morality; truths and duties, to their belief in which their own conduct gave the lie. Such shocking hypocrisy, is at least unnatural, and not easy to be credited.

4th, It is not a very probable thing that, of these two women, abandoned to the most shocking lust, which argues a total corruption of mind, and surely a very great relaxation of religious principles, if not an absolute want of them,—one of these women should yet feel these principles so deeply impressed on her mind, as to suffer distress and misery from the reflection, that one of those young creatures committed to her charge was going to attend the sacrament of the communion, without having due notions of the nature and solemnity of that sacred rite; that she, her governess, should be shocked at this idea; that she should go to impart

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her distress of mind on that account to a friend of great worth, in whose opinion she confided, and should earnestly request her advice as to the fittest means for giving her pupil those solemn impressions, and recommend to her the books of devotion most suited for that purpose. This is not like the conduct of a person whose mind was contaminated to such a pitch, as we must suppose this woman's was, if the charge brought against her is true. Nor can we easily believe that a person of this depraved and vicious character should send to her paramour, her associate in wickedness, one equally profligate and debauched as herself, a present to her on her birth-day: Of what? Of a *Bible!* accompanied with such a note as this: *Accept, my beloved, of that book, which can give consolation in every situation; and, dearest earthly friend, never open it without thinking on her who would forego all friendships but her God's, to possess yours.* This is the language of enthusiasm, I agree with the respondent, this is not the language of *rational piety. It is the language of enthusiasm,* but it is the enthusiasm of a pure, a pious, and a virtuous mind.

5th, Again, my Lords, attending to the circumstances, and to the times in which these pursuers are alleged to have gratified their unnatural passion, surely it is an improbable thing, that two women who, it is proved, had the most serious quarrels with each other upon no slight matters;—quarrels that produced the bitterest and keenest reproaches on both sides; angry letters; complaints to their mutual friends; quarrels which went on for a length of time, and produced at last a determined purpose and resolution of dissolving their copartnery, and putting an end to all intercourse between them;—that at the very time when these quarrels were at their height, these two creatures, thus squabbling and fighting all the day, bitterly reproaching each other with selfish, interested, unjust and dishonourable conduct, were at this very time holding meetings in the night in each other's beds, for the purpose of gratifying an unnatural lust for each other's persons. This is not consonant to human nature, or to the ordinary course of human conduct.

6th, Moreover, it is not a very probable fact, that two women, burning with this incestuous passion for each other, but who, at the same time, must at least be supposed to have been desirous of concealing their abominable intercourse, and who had the arrangement of the whole house at their command, so that they could have contrived the means of gratifying their passion either by night or by day, without the smallest suspicion or risk

of discovery; who had two or three hours every night free from all interruption, after their pupils were gone to bed, when they might have indulged themselves without restraint;—nay, who might, if they chose, without any impropriety, have slept *together every night* in the same bed, or had their beds in one separate room apart from the scholars;—that they should choose, on the contrary, to sleep in different rooms, surrounded by the beds of the boarders, and each take for her bedfellow the eldest girl in the school, the persons, in short, the most likely to be spies upon their conduct, if any thing was passing of a suspicious nature, and which it was their interest to conceal;—yet this most extraordinary arrangement, which I think none but persons absolutely bereft of their reason could have made, in the circumstances in which we are to believe that they stood to one another, we must suppose *them* to have made without the *smallest necessity*, or motive so urging them.

To close this catalogue of anomalies and inconsistencies,—this accumulation of moral phenomena, contrary to all nature and human experience,—let us attend to the conduct of these two women upon the first explosion, which overwhelmed them, and broke up the school. It is not a very likely conduct that two persons, *conscious to themselves* of such abominable practices as are here supposed, and having every reason to believe that their guilt *had been discovered*, and that their scholars had *witnessed* their nightly interviews, and knew all that passed at them;—that these persons, with this consciousness, and with this knowledge, should, instead of hiding their heads in silence, shrinking from all investigation, and retiring quietly from that situation where they were thus blown upon and disgraced, (for even the suspicion of such guilt was disgrace and ruin to them;)—that instead of quitting the place, and removing quietly, as they might have done, to another situation, where their character was unknown, and where they might turn their talents to advantage;—that instead of this conduct, natural, and I will say, almost unavoidable, if their conscience *truly accused them of guilt*, they should most urgently provoke a disclosure of their crimes, that they should teaze and torment their accusers into a specification of the charge of which they were suspected;—that one of these persons should write to her accuser, adjuring her, *as she hoped for mercy from the God of mercy*, to disclose what they were accused of;—then that striking circumstance which, of all others, was the most strongly impressive, (I speak from my own feelings, and thence I judge of its

impression

impression on others), the behaviour of Miss Woods in that interview with Lady Cunynghame and Miss Drysdale, when the poor creature threw her arms around Miss Drysdale's neck, and earnestly intreated her and Mrs Dalzel to find out *what it was* that she and her partner were accused of. Could this agony of passion be all a counterfeit,—a blind and mockery,—a piece of theatrical action to disguise a consciousness of guilt? Is this consonant to human nature, or is it possible to believe such a refinement of vice and depravity? And when at length the accusation is spoken out, and the facts alleged against them are avowed, is it conceivable that these wretches, conscious of their own guilt, and, as we must now hold, detected in it, should brave their accusers to a proof of it;—bring a prosecution against them for *calumny*, in which it was a necessary consequence that their whole conduct was to be exposed to open view in all its blackest colours; and yet still more extraordinary, that in bringing this prosecution for calumny, they should, instead of summoning the first author of the calumnious charge as a defender in the action, (which they were legally entitled to have done, and which would at once have cut up the defence and its proof by the very roots,) they should allow this author of the charge to be brought forward as the principal evidence against them, when they could have thus easily quashed her evidence altogether. How is this conduct reconcilable with the defender's supposition of a full consciousness of their own guilt?

Such are the warring and contradictory phenomena, which we are required to believe in this most extraordinary cause, upon the supposition that the facts alleged in the defenders condescendence are true. Any one of the anomalies and inconsistencies I have mentioned, so contrary to what usually happens in the ordinary course of things; any one of these would be sufficient to throw a suspicion of falsehood upon a story, though it were probable and likely in every other particular. What, then, shall we say of a story which is *composed altogether of such anomalies*,—of such violent contradictions to the ordinary rules of human conduct? What can we say, but that either such a story is *false*, or that God Almighty had in this instance formed two human creatures, Miss Jane Pirie and Miss Mary Anne Woods, different in all their motives of conduct, their desires, fears, passions, and apprehensions, from the rest of the human species.

But, it is allowed on the part of the defender, that such facts and circumstances as we are here called to believe, do carry with them

them a very great degree of improbability; but, then, it is said, that with all their *improbability*, they are not *impossible*, and where that is the case, they are the subject of evidence; and there may be a proof so strong, as to bring conviction to the mind, that a fact, or a story consisting of apparently contradictory facts, however improbable it may be, is actually true. This proposition must be admitted. We may have a positive proof so strong as to convince us, that the most unlikely and improbable facts, if only allowed to be possible, did actually happen. But, then, the matter just resolves into a balancing of moral evidence; and the Judge or the Juryman who tries that evidence, has just to put this alternative question to his mind, Whether is it more credible that these improbable facts, and *next to impossible*, are true; or that the witnesses who have sworn to them, have either sworn falsely, or have been under some mistake, some error or delusion? This, I say, is the fair state of the question: What is the most rational belief upon the whole matter? and, Whether is it easier to conceive falsehood, where there is any ground or motive for it, or simply error or mistake, upon the one hand; or to give credit to a story made up of the most palpable inconsistencies, shocking absurdities, base and unnatural suppositions, and the most gross deviations from the ordinary laws of human conduct, upon the other? I have put this question to my own mind in this cause, and I have no hesitation in saying,—indeed, my reason tells me, I must say it,—I cannot avoid it,—that I find it much easier to assent to the former of these alternatives than to the latter.

For what is the proof upon which we are called on to believe this most shocking and unnatural story. If that maxim be true, (which I think every body must assent to,) that the more improbable the fact, the stronger must be the evidence to render it credible, let us apply this maxim to the case before us. We have here a story, which, is in itself, extremely unlikely and unnatural. To prove the truth of that story, it is necessary that the credit of the witness should be unimpeached; they must be *omni exceptione majores;* their cause of knowledge must be positive, precise, unambiguous, and so conclusive on the matters sworn to, as to exclude all supposition of the fact being otherwise than what the evidence points out. Now, let us try the proof of this improbable story by that canon. The ultimate authority on which this whole tale of wickedness and abomination hangs, is Miss Jane Cumming. Without Miss Cumming's evidence, there would not have been such testimony in this cause, as could have had any

weight

weight of material consequence as a proof of the defence. What would the testimony of Miss Munro, and of Miss Stirling have availed? absolutely nothing: For all finally lands upon the interpretation which Miss Cumming gave them of certain facts, which had never struck them as improper,—upon the construction, which her *imagination* had put upon those whisperings and kissings, and shakings of the bed; without her evidence, therefore, their testimony would have been a mere hearsay; And a hearsay of what? A hearsay of what Miss Cumming *supposed* and *conjectured*. It is clear, that whatever Miss Munro and Miss Stirling had themselves observed of those meetings in the night, and going to each others beds, and whisperings and motions, no evil thought had come into their minds about them. Miss Stirling was, to the last, in perfect ignorance what to suppose about the matter. Her innocent mind had dreamed of nothing ill from all that she had observed of the pursuers behaviour to each other; nor, even after all the conversations between Miss Cumming and Miss Munro, and Charlotte the maid, in her presence, could Miss Stirling know what to think, or to make of it. It passed her comprehension.

With regard to Miss Munro, on whose testimony so much weight is laid by the defender, as if forsooth it were sufficient to produce conviction of the guilt of the pursuers, even putting Miss Cumming's testimony out of the question, it cannot fail to strike your Lordships, that after all that Miss Munro had observed of the conduct of the pursuers towards each other, she was just as much in the dark as Miss Stirling was. She had been disturbed by Miss Pirie coming to the bed where she and Miss Woods lay: She had heard their whisperings, but could make nothing out of them. All that she heard distinctly, was something about Miss Pirie's brother-in-law, and about dogs and colliers. This, at least, was not the language of dalliance and wantonness. The question was put to her, whether, on any of those occasions of Miss Pirie's coming to the bed where she and Miss Woods lay, and when those whisperings passed between them, she observed any kissing or caressing on those occasions; and she deposes positively that *she did not*, (State, p. 62.) She was asked, whether at the time when she first observed the shakings of the bed, and the high breathing, she formed an opinion that there was any thing wicked or improper going on between them; and she swears positively that she did not form any such opinion at that time. She swears also, that she had observed the pursuers kissing and embrac-

ing each other in the day time, which she thought extraordinary ; but then she adds, that the pursuers had frequent quarrellings and altercations, quarrellings which lasted for many days at a time, and she remarked, that it was after those quarrellings when they were reconciled to each other, that she particularly observed that they kissed and caressed each other. Could any thing be more *natural?* Could any thing be more *innocent*, than such behaviour? And this is plainly the amount of what fell under Miss Munro's *own observation.* In short, she had not the slightest suspicion of any impropriety, of any thing but what was perfectly innocent, till she was illuminated by the instruction of Miss Cumming, and of Mary Brown. To Miss Cumming, it appears from her deposition, (p. 47. State,) that she first mentioned what she had observed, and afterwards to Mary Brown. Then it was that a vision was raised to her imagination, which had never before entered it, of a guilty commerce, of which she had never dreamed ; but when once raised, her fancy took fire at the idea, and she began from that moment, to turn every circumstance she had observed, into proofs of this theory, which her friend Miss Cumming had constructed upon the subject. As to Mary Brown, she plainly got the facts from Miss Stirling, with the *commentary of Miss Cumming upon them ;* for she instantly pronounced her judgment, ' If it is true, it is horrible ;' and afterwards declared her opinion, that ' *the thing* was so dread-' ful, that they should be burned for it.' What thing ? not surely the kissings and caressings and whisperings which Miss Munro had seen and heard without any evil imagination about them ; but the kissings and caressings and whisperings with *Miss Cumming's interpretation* of them, which to be sure was horrible indeed, and fully warranted Mary Brown's judgment of them, if as she said, *the thing was true.* In short it is clear, that we are indebted to Miss Cumming, for the first idea and suggestion, of a criminal construction and interpretation put on those facts, which though they appeared mysterious and extraordinary to the other girls, (who could not well account for them, because they did not know the real cause, which explained them), yet never conveyed to them the slightest idea of any thing vicious or criminal between these pursuers. It was the tainted imagination of Miss Cumming, together with another ingredient, of which I shall presently say a little more,—a selfish purpose of her own to serve; it was this which furnished the shocking interpretation, which this young woman thought fit to put on those mysterious appearances,

which

which to the rest of her school-fellows, had never suggested the most distant idea of criminality, or vice of any kind. It was her warm imagination, speculating on things upon which she had thought a great deal, and perhaps talked a great deal, without having any distinct ideas about them,—it was her vitiated fancy that first raised that phantom of an unnatural commerce, known perhaps in that Eastern climate from which she came, and talked of probably among the women whose discourse she had been accustomed to hear, but which in this part of the world is a thing unheard of,—a thing perhaps impossible. That this young woman's mind *was contaminated*, that she was no stranger to those impure ideas, which she had imbibed partly from her Eastern education, and partly perhaps from that precocity of temperament which she owed to an Eastern constitution,—that her mind, I say, was familiar to such ideas, we have proof from her own mouth, when she declares, that the suspicion of some criminal intercourse between the pursuers, *arose from her own reflections*, before she conversed with any body upon the subject. This was in answer to a shrewd question put to her, of which she did not immediately see the tendency. The inference, however, is unavoidable, that her mind and imagination were familiar in such matters. The idea occurs to her, which would never have occurred to a pure and unvitiated mind, to a mind uninstructed in such matters. It would never have occurred to such a mind as Miss Stirling's. It *had* never occurred even to Miss Munro, till Miss Cumming suggested it to her; but to this young woman, it occurred, as she owns herself, *from her own reflections*;—and having once conceived this abominable idea, she construes every appearance which she saw, or word which she heard, every equivocal circumstance in those mysterious night-visits, (for mysterious and incomprehensible, they certainly must have been, while the reason of them, or the motive to them was unknown), she construes all these circumstances, into so many proofs and confirmations of this shocking supposition which had entered her mind. She probably had wrought herself into something like a belief of the criminality of these pursuers. She knew the crime was a possible thing. She was prone to believe ill of these pursuers. She had a prejudice against them. Of this fact I think there is a certainty, in spite of all the pains which the defender's council have taken to convince us by argument, that this girl had no reason to take a prejudice against her school-mistresses. She *had* reason, and *good reason too*, for bearing them no good will. She had experienced little indulgence from them,

them, because they did not think her conduct deserved it. She had been more frequently in fault, and more frequently disgraced and censured, than any other girl in the school. She had had severe things said to her, things that were likely to stick and rankle in her mind. She therefore did not like her mistresses. She was tired of the school, and was earnestly desirous of getting home to her grandmother's, and of associating with her family, and having her share in fashionable amusements with them. The bondage of the school was irksome to her. The discipline was too rigid for her. In one word, her mistresses had no high opinion of her, and she did not like them. This is human nature. But still, I do not think so ill of her, as to believe she would have brought this horrid charge against them, to her grandmother, under the consciousness that it was altogether a falsehood of her own contrivance; and here I will state, what I believe to have been the progress of Miss Cumming's mind upon the subject. The defenders argue with great plausibility, when they say, it is a most revolting supposition, to conceive that a young girl of sixteen, of amiable manners, and gentle temper, should conceive such a diabolical plan, as to bring about the utter ruin of two innocent women, by means of a horrid fiction of her own invention, and which could not fail to bring herself and her family into the most distressing and hazardous situation, from that strict inquiry, to which the charge would lead,—an inquiry in which there was every probability that her own malice and falsehood would be fully detected, her own character destroyed, her grandmother's favour forfeited, and which in short must lead to her own ruin. The answer to all this is, in the first place, that to Miss Cumming's mind, the fact of such a lascivious commerce, between persons of the same sex, did not carry with it, either the idea of impossibility, or of that shocking criminality, which it would have excited in the breast of a young girl, born and educated in this country; and the equivocal and mysterious circumstances, which had fallen under her own observation, might not improbably in such a mind, have actually led to *a pretty strong suspicion*, that the fact with which she meant to charge them, had some ground in reality. But in the second place, Miss Cumming's original intention, was neither of so black and diabolical a nature as has been supposed, nor did she in the least apprehend any of those dangerous and dreadful consequences, that this argument supposes she must have had in her full view. She neither meant to ruin these two poor women, nor did she in the least apprehend that she was to bring

bring her family or herself into any distress, or danger, or unpleasant consequence whatever, by the scheme which she had formed. Her purpose and her plan, (wicked enough as it was), went not one whit farther, than to accomplish her own removal from the school, which she disliked, and to procure her the liberty and the gratifications of fashionable life, which she longed to partake of. These, I firmly believe, were the sole objects she had in view. Now, how was this matter best to be accomplished? She knew very well that her grandmother had a high opinion of her mistresses; she knew that no slight matter would alter this opinion. The ordinary complaints of severity and harshness, or bad treatment with regard to their diet, or such a fault as Miss Stirling complained of, their want of cleanliness,—these would not have answered the purpose. They might have produced a little blame, or a hint from Lady Cumming in the way of friendly advice to these young women; or perhaps they might have produced an inquiry, that landed in proving that the complaints were unjust, and so might have brought a severe censure upon the person who made them. Nothing of this kind, therefore, would answer Miss Cumming's purpose. It was necessary that some cause should be alleged, that was of a strong, and of a cogent nature indeed, and which, if it once gained belief with her grandmother, would be decisive in making out her point. It must likewise be a cause of such a nature as she concluded, would, according to every probability, bar all scrutiny into its truth or falsehood; for any ordinary cause, as I have said, would necessarily lead to inquiry, and that was dangerous. It must be such a charge, that every motive should rather prompt to the burying it in silence, than propalling it to any body, far less of avouching it to the parties accused; but at the same time it must be such a charge, that if Lady Cumming *should think of* questioning her daughter's school-fellows about it, (as she perhaps might), there should be such circumstances *actually true*, as to give a sort of corroboration to the main charge. Miss Cumming found all these requisites in the story she thought fit to tell; and how well she had in general calculated, the event demonstrated. The story produced its complete effect. Miss Cumming was instantly released from school; and, so far from any inquiry or investigation taking place, her grandmother determined to maintain the most profound silence, both to the *pursuers* as to the cause of removing her, and even at first to every body else. This, it must be allowed, was a plan of no little art

upon Miss Cumming's part. But the most refined art is sometimes apt to overshoot its own purpose; and such was the case here. One little matter had been left out of Miss Cumming's calculation, and which was likely enough *not to have occurred to her*, and that was, the high moral feeling of the good old Lady; that virtuous zeal which could not rest satisfied with removing her own child from this house of corruption, but thought it a moral obligation,—a Christian duty,—to do every thing in her power to prevent the children of others from any longer remaining under such a roof; conceiving herself responsible, as *she* had been the means of recommending those women, and procuring scholars to be put under their charge. This consequence Miss Cumming had not foreseen; and it was no wonder; for few people would have felt precisely as Lady Cumming did on this occasion. But the extraordinary zeal of this good Lady was of deep and alarming consequence to her grandaughter. She saw now, that the story which she had told merely to serve a little selfish purpose of her own, was to break up the whole school; and that this in all human probability must land in an investigation, in which she would be publicly called upon to make good that heavy charge, which she had privately ventured to make against these two women, and which, contrary to her design, had brought them to ruin. Miss Cumming had now no alternative but boldly to stick to her assertions. All that was valuable to her on earth depended upon adhering stedfastly to her story. If she flinched from it, she was gone. Her grandmother's favour was forfeited. Her state and condition in life was at stake upon that dependance: it was a deep stake indeed; and after the first step, there was no retreat. She therefore sticks to her story, of which her own testimony is the main evidence; and now, my Lords, upon that testimony, as I have said, every thing hangs. If Miss Cumming's testimony is to be credited, those two women are the greatest monsters of vice and of hypocrisy that the sun ever shone upon. If Miss Cumming's testimony is not to be credited, there is not a shadow of evidence that goes to impeach their moral character in the slightest degree, nor any thing but what is perfectly consonant to the proven facts, in the situation and circumstances of the pursuers at the time, and altogether consistent with perfect innocence, and the most absolute purity of thought or deed on the part of these unfortunate women.

But is Miss Cumming a *credible* witness? Or is her testimony of that nature, as to force and compel our belief in a story thus unnatural

natural and improbable?—a story involving that mass of inconsistencies and contradictions to the ordinary laws and motives that regulate human conduct, which I have enumerated. In the *first* place, Miss Cumming, I say, is a prejudiced witness. She is a party. She is giving evidence in her own cause,—a cause where her honour, her character, her state in life, are absolutely at stake: a cause in which she ought to have stood as a defender, and not as a witness:—a cause, therefore, in which instead of being exempt from the suspicion of bias, prejudice, or interest of any kind, not to say malice, she is, on the contrary, exceptionable on every one of these grounds. This must be allowed. The Court has pronounced her to be a suspicious witness, by admitting her testimony *cum nota*, that is, with a reservation of all those circumstances, which, both in the eye of law and in sound reason, have a manifest tendency to weaken its credibility.

But the testimony of any witness, in order to be credible, and more especially when brought to prove an extraordinary or improbable fact, must at least have these essential requisites: It must be free from all manner of contradiction or inconsistency: it must be consonant to the account which the witness has before given of the same facts; and it must be consonant to the truth of such facts as have been proved, and put beyond all doubt, by the other evidence in the cause; for if it contradicts such proven facts, the witness is plainly detected in a falsehood, and there is no credit due to any thing he says or swears to. But will Miss Cumming's evidence stand this criterion? What becomes of the story of the key-hole and the sofa?—an absolute falsehood,—a proven impossibility,—which, when detected, she endeavours to cure by another falsehood, the maid's seeing them on the sofa when she was going up the stair-case,—a thing, which, on inspecting the house, was found to be utterly impossible. What becomes of the story told about the hooting and hissing in their walks at the Water of Leith? That Miss Cumming, therefore, was capable of inventing stories, or, in other words, of telling falsehoods, and when detected in one untruth, of propping it up by another, is clear from the different parts of her own deposition: That she invented the story about the *wet noise*, is palpable. The thing is physically impossible, even taking the fact of a criminal intercourse for granted, —a noise like something that the witness had never in her life heard, but which she supposed it would be like, if she had heard it,—a noise which lasted five minutes at a time, and happened three or four times in a night, and was so loud, that she heard it when

when she was lying in a different bed; and a noise that convinced the witness, and made her certain, as she says, that the parties were doing something indecent together, although she had never been told that any such noises took place when persons were doing indecent things together; and, when asked, What then made her certain that the pursuers were indecent when they were making that noise? she answers, first, 'Because she felt Miss Woods 'put down her hand just before she heard the noise;' a very satisfying reason indeed! And then when the question is repeated, a long silence, and the same absurd answer. If ever there was a falsehood manifest from its own bare statement, I do say this is that falsehood. What credit, then, are we to give to the testimony of a witness, convicted in telling such glaring and manifest untruths? Can we, after such proofs of falsehood and invention as we have in this witness's deposition; can we lay any stress on the argument which presumes this young woman to be of an *innocent mind*, and *incapable* of inventing that calumny, when we find her so capable, so prompt, and so fertile, in inventing absolute lies and impossibilities, in order to prop up that calumny and render it probable.

Proof, p. 82.

I had not the advantage which the greater part of your Lordships had in hearing this witness examined, and of observing the manner in which she delivered her evidence; and often a great deal of the weight of a witness's testimony depends on the manner in which it is given; but I have read the proof with attention, which takes notice, in several parts, of the long *silences* that occurred, when any questions were put to Miss Cumming of which she did not immediately see the tendency, and which led her to fear she was in hazard of contradicting herself,—a hazard which a person never can be in who is telling a true story. What interpretation *can be* put upon those long silences, but that she was racking her brain at the moment to give such an answer as should be consistent, at the same time, with the proven facts, and which she had herself sworn to, and with the criminal charge against these persons, with which those facts seemed apparently to be at variance? Is a person who is honestly telling the truth ever likely to get into an embarrassment of this kind? Never. It is impossible it should be so.

But this witness is not only detected in racking her brain, to invent falsehoods; she is palpably convicted, in more than one instance, of knowingly and wilfully *suppressing the truth*. It is not proved, that on any one occasion when Miss Woods came to Miss Pirie's

Pirie's bed-room, she had left her own bed for that purpose, and come *undressed* to Miss Pirie's bed; there is not a vestige of proof that this ever happened. The only times on which it is sworn that she came to Miss Pirie's bed-chamber, or to her bed, were when she came from her aunt Mrs Woods's room, where she had been earnestly conversing with her the greatest part of the night, and when she was obliged to pass through Miss Pirie's bed-chamber, in her way to her own. But on every one of these occasions, she was in her *day dress*, and had all her clothes on. But does this material circumstance appear from Miss Cumming's evidence? Not a word of it. It is totally suppressed; and for a good reason. If Miss Cumming's story is true, about the lifting up the shifts, and her feeling their bare legs and thighs, Miss Woods must have deliberately put off all her clothes, and come to bed naked to Miss Pirie, (which the witness durst not venture to assert to be the fact,) or else Miss Woods must have lain down by Miss Pirie, with all her clothes on, which would give the lie at once to the whole story of the lifting of the shifts, and feeling the naked legs and thighs, which she had sworn to. It was necessary, therefore, that Miss Cumming should *suppress* that material fact altogether, of Miss Woods being in her clothes, *or her day-dress*, when she came to Miss Pirie's bed, and accordingly, she never breathes a syllable about it. Just in the same way, and for the same purpose, she suppresses another fact, which is likewise proved to demonstration, that Miss Pirie always slept in her *bed-gown and petticoat*, and with her *stockings on.* During three whole days examination, this important fact is most carefully concealed by Miss Cumming, and every circumstance which she mentions, and details with such minuteness, about lifting their shifts, feeling their bodies, their legs, and so on, is all studiously calculated to make it be believed, that they were in naked bed with each other, with no other clothing than their shifts. And it is not till the end of the fourth day's examination, when the question is directly put to her, '*Did Miss Pirie usually sleep with a* '*bed-gown and wrapper, and petticoat on?*' the witness depones *that she did.* This is the witness who had taken her solemn oath to tell the truth, and the *whole truth*, and nothing but the truth.

But the testimony which is necessary to prove an improbable fact, must not only be unsuspicious on the score of veracity, and free from contradiction and inconsistency, far more from any thing like concealment or prevarication, but it must be a testi-

mony of that kind as to be absolutely conclusive *in its tendency*, so as to exclude any other supposition, than that the fact is true which it goes to establish; for otherwise, if the fact is in itself improbable, such inconclusive evidence must plainly go for nothing. But does the evidence which we are now considering correspond to this character? Is it absolutely impossible to conceive, that supposing all or most of the facts here deponed to by Miss Cumming, Miss Munro, Miss Stirling, and the other witnesses, to be true, yet the inference of guilt against these pursuers, or even of gross indecency of any kind, may nevertheless be false? I speak from my own feeling and conviction, and from the impression which the whole body of the evidence makes upon my mind, when I affirm, that every one of the material facts which can be truly affirmed *to be proved in this cause*, and which do not rest upon conjecture and supposition,—that every one of these facts are perfectly consistent with the most entire innocence of these unhappy women, not only of actual criminality, but even of the slightest indecency or immorality. The frequent caressing, kissing, and embracing, in the sight of the scholars, and of the servants,—the coming in the night time to each others beds, and even lying below the bed-clothes together,—the whisperings,—the high-breathing,—the kissing each other in bed,—the words sworn to, *Do it darling, You are in the wrong place*, and so on,—the motion and shaking of the bed,—the uneasiness expressed and fear of wakening the girls,—in short, every material fact of a suspicious or mysterious nature which can be said to be proved in this cause,—every one of these, and all of them together, when the other proven facts in the case are taken into consideration, (I do say, because I feel my conviction of it,) are perfectly compatible with the supposition of absolute innocence on the part of these pursuers. What could be more natural for two young creatures of ingenuous minds, but ardent tempers, who, with all their esteem for each other, had, from various circumstances, had their friendship interrupted by jealousies and suspicions of each others preferring their own interests to their friends, who had frequent quarrels and altercations on that account, which appear to have given the most sincere pain to each of them, and led them to apologise for their injustice to one another, and eagerly court a reconciliation, and a return of their mutual confidence,—what could be more natural, than after these quarrels, they should show their affection by kissing and embra-

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cing each other, even in the sight both of the scholars, and of the servants who had been witnesses to their quarrels and altercations? What was there extraordinary, or of a blamable nature, in the one coming to the bed-side of the other, in the middle of the night, if they had parted before in bad terms, and afterwards regretted that they had so parted, or if Miss Woods had increased her partner's suspicions, by holding a late conversation with her aunt, whom Miss Pirie believed to have been a chief cause of their quarrels?—what could be more natural, than that Miss Woods should, after parting with her aunt, endeavour to quiet these suspicions of her friend, by coming to her bed-side, lying down with her in bed, soothing her with endearing expressions, kissing and caressing her, even with ardour and fondness? Now, could such an impassioned conversation as this, supposing it innocent, could it take place without any motion or shaking of the bed? Could it take place without wakening the girl who slept in the same bed, and without her overhearing a part of these passionate expressions, and perceiving these gestures, and feeling these motions,—none of which circumstances she knew the reason of, or had any clew to account for them? Then the words *Do it my dear;* and *You are in the wrong place;* when we know the fact, that both of these women had rheumatic complaints, which made them frequently have recourse to rubbing the parts affected, what could be more natural, than that the one should say to the other, 'Shall I rub you a little to ease the 'pain, and *give you a sound sleep?*' 'Do it darling; but you are in 'the wrong place,' or 'on the wrong place;' for I don't think it matters a straw, whether the one preposition was used or the other,—though Miss Cumming could most positively swear to the one vowel in distinction from the other, and this, even with a passionate and bitter precision, which did not make her testimony more credible. Then, was there any thing unnatural in the fears which they felt for awakening the girls, and the desire they had of concealing from them, that they came to each other's beds, though conscious that it was for the innocent purpose of making up their quarrels, and quieting each others minds? Yet still, from the sense of its being an impropriety, was it not most natural that they should wish to conceal it? And is this most natural feeling to be construed into a proof of guilt? Because, forsooth, Miss Pirie's face grew red, when Miss Cumming complained in the morning, that she had been disturbed in the night-time,

time, must this be interpreted into a consciousness of guilt, as Miss Cumming chose to make it in her remarks to Miss Munro? I appeal to every unprejudiced mind, whether any thing was more natural than this very circumstance, on the supposition of the most perfect innocence? She was ashamed to find that this little impropriety of the one coming to the other's bed, had been taken notice of, and that she had given this cause of complaint to Miss Cumming, that she had disturbed her sleep. She blushed to think that Miss Cumming had some reason for this complaint.

In short, there is not a single circumstance in all those mysterious meetings in the night-time, and the desire of concealing them,—in all those fond and endearing expressions, those caressings, whisperings and shakings of the bed, which have been so shockingly misconstrued to the ruin of these two poor creatures,—there is not one of these circumstances that is not perfectly consistent, and most easy to be accounted for, from the known and proved facts of their situation at the time, and which, when candidly viewed, is not only reconcilable to their entire innocence of any improper deed or thought, but is on the contrary a proof of an ingenuous and amiable and virtuous nature, altogether consonant to that character of unblemished rectitude and virtue, which it is allowed these unfortunate young women enjoyed, before this calamity fell upon them.

Now, if such be the nature of that evidence, on which we are required to give credit to this most improbable, most unnatural story,—a story involving such palpable inconsistencies and anamolies, as almost to throw it beyond the verge of human faith to believe,—if we see that evidence not only impeachable on the score of contradiction in many material parts by the different witnesses, but resting for its main and ultimate support on the testimony of one witness, against whom every objection lies that can contaminate legal evidence,—manifest interest in the cause, palpable prejudice, if not malice, detected falsehood and prevarication, and suppression of the truth in the delivery of her testimony,—and if that evidence, after all, is so far from being conclusive of guilt, that it is perfectly *reconcilable* and compatible with *absolute innocence*, and with those facts in the situation of the parties that are proved beyond all dispute,—what shall we say, but that such evidence thus contaminated, thus inconclusive in itself, is utterly insufficient to give the smallest credibility to a charge so glaringly and monstrously improbable, and which involves such palpable

contradictions

contradictions to all the ordinary feelings and passions of human nature, and to all the ordinary laws which regulate human conduct.

But it is alleged on the defender's part, that it is not requisite for making good her defence against this action, that she should bring a conclusive proof of actual guilt on the part of these pursuers. It is alleged, that the defender stands completely justified for the measures she took, if she proves such indecencies and improprieties of conduct in these pursuers, as in the judgment of a careful and good mother, would render them unfit to have the charge of the tuition, morals and education of her daughters; and I understand, that such of your Lordships as gave their opinions for the defender in this cause, rested their judgment on the ground, that sufficient acts of indecency and immoralities *had been* proved as to justify Lady Cumming's conduct in all the steps which she took. But, my Lords, I cannot assent to the proposition that Lady Cumming rested her defence on that vague and general basis. Lady Cumming's defence was, that she entertained a positive opinion that those woman were *guilty of an unnatural crime*, and she condescended upon the special grounds of that opinion, the particular facts and circumstances which she offered to establish by proof, as affording conviction of the truth of that opinion. It is, therefore, on this condescendence of facts *offered in proof, that an unnatural crime was actually committed*, that Lady Cumming has herself put her defence, and not upon the vague and general assertion of immoral and indecent behaviour. It is not sufficient for her to say, I have proved that the conduct of these women in kissing and caressing each other before the scholars, and even in sight of the servants, was extremely indecent and improper, and rendered them unfit to be the guardians and instructors of young females. Nay, it is not sufficient for Lady Cumming, to say as she has actually said, and what she now maintains in her last paper, the answers to the petition,—I have proved facts which convinced my own mind that these two women had a criminal connection with each other. The question is, Has she proved facts which *ought to have convinced* her mind of the truth of that foul charge, and which are sufficient to convince any reasonable and dispassionate person of its truth? This is the question which we are called to determine, and this is the basis on which it is put in the answers for Lady Cumming, and on which it is *properly put*. The whole scope of those answers is to impress the conviction, not that these two women had shown an

indecency and immorality of conduct; but that, *de facto*, they were guilty of an *unnatural crime with each other*, the evidence of which rested on the proof of the facts stated in the condescendence. It is, in short, upon the relevancy of the facts stated in her condescendence, and on the proof she has brought of those facts as inferring *venus nefanda*, that our decision must rest, sustaining or repelling Lady Cumming's defence against a claim of damages. It may be granted to the defender, that she has proved facts and circumstances of a mysterious and ambiguous aspect for these pursuers,—facts that, till a key of explanation is furnished from the actual situation and circumstances of the pursuers at the time, might have naturally excited suspicions of some impropriety of behaviour in these young women to one another. But what ought to have been Lady Cumming's conduct, when these ambiguous and mysterious facts were communicated to her? Was she warranted, without the slightest inquiry, farther than the detail given by a girl of sixteen, conveying this horrible charge of the most unnatural guilt against her schoolmistresses,—was she entitled upon the bare credit of this girl, to act in the manner she did,—to condemn at once these unhappy women, even *without* acquainting them of the charge, or allowing them to be heard in their own defence, or taking any means whatever to ascertain the truth of this monstrous accusation? Was she justified on this slight ground, not only to take away her own child from the school, which she might have done silently and quietly, if her own mind was convinced upon the subject; but to carry her zeal to that extraordinary length, as to insist that every one of the parents should believe upon the same slender evidence, this most unnatural tale, and remove *their children* without delay, from this shocking sink of iniquity? Was she entitled, in short to blast the character of these women to the whole world; and, upon this pitiful ground of belief, the tale of a girl of sixteen, without further inquiry, to consign these miserable women to utter ruin and destruction? Here lay the blame of Lady Cumming. Her motive, no doubt, was virtuous, and I give her all the credit that can be allowed her on that score; but her conduct was rash, inconsiderate and cruel to these unhappy women. Lady Cumming may have acted *bona fide*. I doubt not she did. She believed what she was told; but she took no means to ascertain the truth of her information. Here, therefore, her conduct

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was negligent in the extreme. She scorned all idea of questioning the truth of her grandaughter's story, however incredible, however shocking in itself, and however fatal in its consequences to those women, of whose character she had thought so highly, and had the best grounds for thinking so. They were sacrificed *at once*, and their ruin sealed, without hearing them in their own defence, without even acquainting them of their crime. If there was not malice in this conduct, there was a precipitancy, and a culpable negligence, for which it is impossible to find excuse. On the whole, it is with the utmost pain, the most sincere regret, that I must add my opinion to those of your Lordships' number who are for repelling the defences, and finding damages due. To what extent I am not prepared to say. That must be matter for future consideration.

LORD CRAIGIE.

(Revised by his Lordship.)

26th February 1812.

THIS is a most painful discussion; and I have endeavoured to relieve myself from the feelings it is apt to excite, by confining my attention as much as possible to the questions of law and of evidence that are involved in it.

The pleas or defences that have been urged are *twofold;* 1. The *bona fides* of the defender in making the statements on which the action is founded; and, 2. The truth of those statements, combined with the situation of the defender, which rendered it her duty to make them, if they were founded in truth.

As to the *first* plea or defence, it might have been admitted, if the defender's communications had been in a different form. If she had stated that she had received her information from Miss Munro and Miss Cumming, it would have been enough, upon the authorities quoted in the answers, to prove that she had got such information. It would have been her duty, circumstanced as she was, to have communicated the information to those persons to whom she had previously recommended the pursuers as being well qualified to take the charge of their children; but having asserted, without any reference to the authors of the information, that the pursuers had been guilty of gross indecencies and improprieties, she thus, in my opinion, took upon herself the whole burden and risk of the accusation.

But, though the manner in which the defender made her communications must exclude every plea arising from *bona fides*, the circumstance affords a strong confirmation of the proof that has been brought, because it affords real evidence of the defender's belief and confidence in the veracity of her graudaughter, and that she had never, in any essential degree, deviated from the truth. And this, also, must have been the impression of those respectable friends by whom the defender was advised, in making the different communications.

Upon the *second* plea or defence, namely, The truth of what the defender had asserted as to the pursuers' conduct, I observe, that, in the former deliberations of the Court, the Judges who were then present had differed from the outset. By some of your Lordships it seems to have been held, that, unless the defender could prove the actual commission of *venus nefanda*, the crisis of venereal passion, she must be liable in damages. On the other hand, it is held, that, if gross indecencies were proved, this must be sufficient, because it altogether disqualified the pursuers from being the instructors of youth. To this last opinion I most clearly, and, without hesitation, subscribe. To prove that the pursuers had acted as no modest women would do, is to prove the defence; and it appears to me that the defender has proved this, not only so as to convince the mind of an individual like the defender herself, but also the conscience of a Judge, by legal proof and testimony.

In the laws of most countries, and particularly in those of England, the testimony of Miss Munro, a witness of unquestionable credit, would have been alone sufficient to prove any crime of which the pursuers could be guilty. And as to the pursuers having been guilty of gross indecencies, her testimony is indisputably clear, precise and positive. It is in vain to assert, that she was misled and deceived by Miss Cumming. She swears to circumstances directly falling under the observation of her own senses, and which, if proved, must render the pursuers unworthy of a place in the society of virtuous and modest women. And, although with us it is held, that the evidence of one witness, without any thing else, is not sufficient to prove a criminal act, we do not require two witnesses swearing directly to the same act. One witness of full credit, if supported by collateral evidence, whether arising from the conduct of the parties accused, or establishing circumstances previous or subsequent to the act, and affording

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ing a presumption that such an act was committed, will be enough. And here, there is corroborative evidence of all the kinds I have mentioned.

1. Miss Munro's evidence is confirmed by that of the nurse. It is true, the nurse cannot be considered as a separate witness, because she only repeats what Miss Munro had said to her; but still, this confirms Miss Munro's veracity and accuracy in a way that, morally speaking, appears to leave no room for doubt.

2. Miss Munro's evidence is confirmed by the statements of the pursuers themselves, both before and since the proof was brought.

If, in a trial for a capital crime, it is competent to resort to the *declaration* of a pannel for corroborative circumstances, how can it be doubted, that the written statements of the pursuers, after having been put on their guard, and, withal, guided by very eminent and zealous counsel, must be taken into the scale of evidence, and weigh heavily too? And these statements appearing in the answers to the condescendence, afford the most substantial, and, to me, the most convincing confirmation of Miss Munro's testimony.

3. There is, besides, the evidence of Miss Stirling. She swears to much of the communications between Miss Munro and Miss Camming, and so gives confirmation to their testimony. But she does more: She swears to some intercourse between the pursuers of a suspicious nature. She also swears, that some of the other young ladies had suspicions of the pursuers' conduct. But, above all, she swears most distinctly to information obtained from Charlotte Whiffin the maid, which, if confirmed by the latter on oath, must have put the matter beyond all doubt. And holding it clear, (as I do), that this woman has been guilty of perjury, by concealing the truth, and for the unquestionable purpose of screening the pursuers, I consider the testimony of Miss Stirling and Miss Munro, with regard to what she said, to be to the full as convincing as if the maid had died before the proof was brought. It is true, the maid had stated something about the key-hole, the sofa, &c. which was not true, or the young ladies had somehow misunderstood what she had said. But as to the material and important circumstances, the evidence appears to me to be as strong, as if one or more credible witnesses had sworn to the information obtained from Charlotte Whiffin, at a time when she could not be examined herself.

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4. In addition to all this, if any addition were necessary, we have the evidence of Miss Cumming. A great deal has been said, and, in my opinion, far too much, with regard to this young lady. But I do not see that she is to be considered as a false or perjured witness. And as to the material facts, in which she confirms, and is confirmed by, the evidence of Miss Munro, I have not the least distrust of her testimony; and, though her evidence had not been taken, the proof would have been such as I could not, either as a man or as a Judge, refuse my assent to.

Upon the whole, therefore, it appears to me, that the interlocutor which has been pronounced ought to be affirmed, and the defender assoilzied from the action.

LORD GILLIES.

(From short-hand Notes taken by ROBERT BELL, *Esq. Advocate.)*

26th February 1812.

IT has been my endeavour to get rid of my former impressions in this case, in the only proper way, by a painful, and, I hope, an impartial reconsideration of the whole case. The result, however, has been, that my conviction in favour of the pursuers has been in no degree weakened, though it is not stronger, for stronger it could not be. I had, when I was their counsel, and I have now, the most perfect and entire conviction of their innocence. I I could have wished that it had not fallen on me to judge in this case; that, however could not be avoided, and it is my duty to give my opinion.

My conviction is neither weaker nor stronger than it was. I consider the question here before us, and the question truly decided by the Court, to be, Whether these women were, or were not, guilty of *venus nefanda?* for I cannot enter into the distinction which I have heard. It is, or it is not, *venus nefanda.*—Unless the cries which were heard, and the endearments which were witnessed, proceeded from libidinous motives, the pursuers are not guilty. If they did not, what they did was nothing more than a breach of decorum or good breeding, which might render it proper for Lady Cumming Gordon to remove her grandaughter from the school, but which could not, in the smallest degree, justify what she has said. It would have been improper, and a breach of decorum, if they exposed too much of their persons, by having their dress too short, either above or below:—That would have been a breach of decorum; but if it did not proceed from libidinous motives,—If there was no lust, could it justify such a charge as this?

If lust is laid aside as the motive of their conduct, then, I say, that they must stand acquitted of every thing else but a bare breach of decorum or propriety, which never could justify Lady Cumming Gordon in the defence which she has openly and judicially held out.

It appears to me, that such indecencies, for I consider them as indecencies only if they were not libidinous, have been very artfully attempted to be made to appear probable, by the mode of pleading adopted in answers. Matters not only perfectly innocent and natural, but perfectly common, and I may almost say universal in this country, are there founded on as presumptions of guilt. They try to lead your Lordships to believe, that wherever two young women form an intimacy together, and that intimacy ripens into friendship, if ever they venture to share the same bed, that becomes a proof of guilt. I may call your Lordships to a specimen of this kind of reasoning on page 25. of the answers, where, after a great deal of eloquence, they conclude in these words: 'Their early in-'timacy, their rapturous friendship, and the practice of sleep-'ing together in the same bed, when, by the way, there was 'not the least occasion for it, afforded excitement and oppor-'tunity.' What are we to think of this! Are we to say that every woman who has formed an early intimacy, and has slept in the same bed with another, is guilty! Where is the innocent woman in Scotland,—if any such is known to your Lordships, she is not known to me. I hope none such will ever be known to me, whose intimacies do not ripen into friendship, and whose friendship would not permit her to sleep in the same bed with her friend when necessary.

There is another passage in page 32. of the answers, as to their sleeping in the same bed together, which I dwell on the more readily, because I am much afraid that they have made more impression on some of the Court than I think they should have done. (Read it). I ask, If, in the case of women in their rank of life, it is not the natural and uniform practice to partake of the same bed; and they add to this passage: 'The respondent by no means 'wishes your Lordships to rest a presumption of guilt on that 'circumstance alone.' So all that can be said of two women sleeping in the same bed is, that that circumstance alone is not sufficient to infer guilt! Sure I am, that I am altogether ignorant of the manners of this country, if this is not most extraordinary. I cannot think or admit, that it furnishes any presumption against them, that they formed an early intimacy; that it

ripened into friendship; that that friendship was of great warmth, and that they sometimes slept in the same bed together. These are the natural presumptions of innocence in my mind.

The whole conduct of the pursuers is, in like manner, represented as suspicious, though I think it is most naturally accounted for by the circumstances. They visited each other at night, because they had no other opportunity of meeting together, from their constant occupation. These visits being paid, it was natural, as Lord Woodhouselee well remarked, that they should invite each other into bed, so that this is no circumstance of suspicion. God forbid that that time should ever arrive when any lady in Scotland, standing at the side of another's bed in the night-time, should be suspected of guilt, because she was invited into it. It is said, that they tried to conceal their visits. I have no doubt of that. Whether they went to each other's bed-sides with the infamous motives that have been attributed to them, or whether they went there on account of their school-business, it was natural that they should wish to conceal it. It was not a creditable thing that such business should have been necessary, which it was, on account of their quarrels. I may be told, that even that was an indecency; but if they were not moved by the passion of lust in paying these visits, I say they were merely indecorums, which did not, in the slightest degree, justify the accusation against them.

I will not say much more as to the improbability of the charge, because that was fully dwelt upon formerly; and it was very ably stated to-day by Lord Woodhouselee. But it does appear to me very improbable, if not incredible, in a moral point of view. I don't mean to deny, that the existence of the crime has been alleged before now, and, perhaps, believed; but such reports, and such belief, do not in my mind prove its existence, and at this moment, I am happy to express my belief, that no such crime was ever known in Scotland, or in Britain.

The words of Dr Robertson are quoted in the answers, to shew how nearly enthusiasm is sometimes allied to lust. My Lords, that historian was not more distinguished by the elegance of his compositions, than by his knowledge of human nature. Speaking, in another place, of the indulgences that were granted by the Church of Rome, he says, that a slight tax was imposed even on those crimes which occur but seldom in human life, and perhaps exist only in the impure imagination of casuists. I don't know what Dr Robertson alludes to here, but I am sure, he says that

crimes

crimes are supposed to exist, which may not exist. I do believe that the crime here alleged has no existence, or, in his words, exists only in the impure imagination of casuists.

But, my Lords, if the physical improbability of the crime is great, the moral improbability of the pursuers having been addicted to such a crime appears to me to amount to an absolute impossibility. I can scarcely think that any evidence would have been enough to prove it. I don't say that no human testimony would have been sufficient, because human testimony is sufficient to establish any fact, however incredible, that is not impossible. But, certainly it was quite just what was remarked by Lord Woodhouselee, that according to the difficulty of the thing to be proved, the evidence of it must be strong. I never heard so fallacious an argument, as that the same degree of evidence was sufficient to prove every kind of averment, I think just the reverse; and to take a familiar instance,—much less evidence would make me believe that a British 36 gun frigate had beat a French 44,—than that a French 26 had beat a British 44. The one I would believe almost without evidence, it is so probable,—the other, I would not credit without the strongest evidence.

But, my Lords, when your Lordships would have that degree of evidence which is necessary to prove any fact whatever, I conceive that it should not only be full and perfect in its kind, but that it should be delivered by persons who are free from any temptation to deceive.

The opinion of Paley has been mentioned by my learned friend; but I beg to refer him to what he says, in speaking of the testimony of the Apostles, and to ask whether their belief is not to be held as sincere and true, as the expressing that belief was to expose them to danger and sufferings. He mentions these circumstances as necessary to give force to their testimony,—that it was against their interest —that it was against the common operations of the human mind,—that it was not to relieve them from trouble, but to expose them to much danger and much suffering. Contrast that with the present case, and I don't think that Paley is the authority to whom it is prudent in the defender to refer.

But it is said, if the story is false, How are we to account for the invention of it by so young a girl? and, How could she, for so paltry a consideration as that of getting away from the school, hazard such an accusation as this?

That is a difficulty, only from the way in which it is stated.—Certainly a good man will not do a bad thing, in order to procure a good, however

however eminent. A wicked man, on the other hand, if the good is great, will hesitate at the commission of no crime to attain it. But he will not do a great evil for a small good. But though that is the case with men of talents and wicked minds, I am afraid it is by no means the case with persons of weak minds. They will commit the greatest crimes, for the purpose of attaining small benefits. They want the capacity which is necessary, to discover that they ought not to commit a great evil for a small advantage.—One striking instance of that occurred in the case of Williams, who murdered a whole family, to obtain a trifling sum of money to spend in drinking and debauchery. Another very recent case, which I have seen mentioned in the newspapers, was that of a servant-girl in the south of Scotland, who poisoned a whole family for almost no reason at all.

It appears to me, that these considerations are applicable to a case of this kind. I think Miss Cumming wished to get away from the school, I think she invented this charge as the means of doing so, and that she had not compared the means that she employed, with the end she had in view—but I think that that is accounted for by her youth and ignorance.

It has been asked, even supposing her to be capable of doing such a thing, How could she ever have imagined it?—But such offences, whether they really exist or not, are supposed to exist, they are talked of, and written about in some countries—and are much more likely to have been learnt in Asia, than in this country.—I deny that the manners of the stage in this country, are so voluptuous and so vicious as the manners of Asia; and I cannot admit the justice of what is said in the Answers as to the stage. Besides, Miss Woods never was on the stage.

I believe that Miss Cumming had sufficient opportunities to enable her to invent the charge, and that she did invent it for the paltry purpose of getting away from the school.

There is still another difficulty, that the repondent has not sifted, and I put the question now: Is it more improbable that Miss Cumming should have invented the story, or that the pursuers should have been guilty of the crime? Which is the most improbable of the two? for your Lordships are forced to make a choice. Whether is it more improbable, that this girl from India should have invented such a charge, or that the pursuers should have committed the crime? I have no hesitation in saying, that it is infinitely the most improbable of the two that they should have done it.

I dare say, when she invented this story, she had no expectation of its being so narrowly investigated; but after that, she had every inducement to support it, for when witnessses tell a story beforehand, they will be convicted of falsehood if they do not swear to it, when it comes to be examined into.

In this case, your Lordships have a twofold inquiry.—It is said, that if the crime has been committed, the pursuers are guilty; but, my Lords, there is no certainty of the crime having been committed—there is no *corpus delicti* made out.

Now, my Lords, recurring to what I said as to the temptation Miss Cumming was under to make good the accusation that she had made, I cannot help calling your Lordships attention to the defender's letter on page 155. C. of the State, (his Lordship read the letter) it belongs to this part of the case, and, therefore, I speak of it here, though one or two remarks which I have to make on it, relate rather to a different part of the case.

I beg leave to say here, that there is no mention of the Miss Dunbars in it. Your Lordships are repeatedly told, that if they had been brough. forward, they would have given a clear testimony against the pursuers: Now, if that were true, would she, or would she not, have mentioned it in her letter? but your Lordships see, that it is quite silent with regard to them.

One passage in the letter says, 'That it is already known that 'Miss Stirling had corroborated the testimony of Miss Cum-'ming.'—How was that known? That Lady Cumming believed it, I don't doubt, for I have the most perfect reliance in her truth. —When Miss Cumming told her so, (and it is a circumstance which weighs with me very much in judging of this case, that the whole information came from Miss Cumming) it is clear that she made Lady Cumming believe that Miss Stirling would corroborate what she said; but that was not true, for Miss Stirling did not corroborate it.

I shall not go over the whole case.—The story of the key-hole is dropped altogether, and a diff rent story is introduced.—Again, there was a story of the Water of Leith that turned out not to be true. A most futile absurd attempt was made to trace it to Charlotte the maid. What could she know of it? Was it ever heard of, that the maid of a boarding-school went out to walk with the school? How could she know it? She had no opportunity of seeing any hing of the kind.

Then there is the extraordinary noise. By whom was that heard? by nobody but Miss Cumming. She says that Miss Munro heard it, but Miss Munro was asked if that was the case? and she says no.

no. And we are told in explanation of that, that Miss Munro is deaf. If that is the case, I am quite clear from what I saw, that she is deaf in so slight a degree as to give no foundation for the explanation. It was called a wet noise, evidently with a view of making your Lordships believe that there was an actual penetration, and then it turned out, that the whole was her own fancy as she compared it to a noise which she never heard. A great deal is said in the answers about this noise, and particularly, that no other account can rationally be given of Miss Cumming's describing it, but that she had actually heard it. I don't believe that; I believe that it was entirely the offspring of her own imagination.

Again as to the pursuer's dresses, there was evidently a *suppressio veri*. That also is strangely misrepresented in the answers. In speaking of the shift, it is said, that Miss Cumming meant the whole of the night-dress. But that is not her evidence, the words she uses are, "that they had nothing on but their night shifts." Now, my Lords, can I believe that a girl so attentive to every thing as Miss Cumming evidently was, should have spoken in this way, if she had been telling the truth, and yet you are told, that there are no inconsistencies in her evidence. I think there were gross inconsistencies, and a great suppression of the truth.

The next thing is the story of her feeling them with her leg. In explanation of this, we are told about a boarding-school vocabulary, and that the leg means the thigh. If we are to go into such matters as that, the case is at an end. Sure I am, that the whole of us thought that she alluded to the leg properly so called. It afterwards came out, that Miss Pirie had her stockings on, as she had on all other occasions. Then the inconsistencies of the story struck Miss Cumming, and it was to get over that, that she said it was not the leg but the thigh.

Then there is a question whether she heard them say, *in* the wrong place, or *on* the wrong place, and it is said that she did not lay the emphasis on the word "in." Now she was quite sure of it; she took it upon herself to swear, what, I will venture to say, no other mortal but herself would have done, that it was *in*, and not *on*.

Another expression was noticed by the Lord President the last time the case was decided. Miss Cumming told us, that Miss Stirling had told her, that she heard one of the pursuer's say, "You "may kiss me, and I will kiss you," but the words that Miss Stirling said she heard, and which she told Miss Cumming at the time were, "Love me, and I will love you."

Last

Last of all, your Lordships have the story of the plot. The appearances of falsehood and improbability in her evidence, which I might mention are numberless, but I will come now to the plot for letting the pursuers know that they were detected. Miss Cumming says, that she never mentioned her suspicions till she became sure of their guilt from her own reflections. Then she says, that the morning after her last occasion, she mentioned it to Miss Munro. Now, Miss Munro says, that that morning on which it was mentioned first to her, she was quite ignorant of the story, and that she knew nothing about it, but that she had been wakened in a fright,—And it was in that state of mind that she permitted herself to become quite sure of the guilt of the pursuers. Finally, they make a plot together to let it be known to the pursuers that they were acquainted with it. Now, how was it to be made known? At that time, your Lordships will observe, that several weeks had elapsed since Miss Cumming was sure of it,—and what was the plot laid? why, it was that Miss Cumming should complain of being disturbed. Not that Miss Munro, who had been disturbed; but that Miss Cumming, who, according to her own evidence, had not been disturbed for weeks before, should complain. What are we to suppose from that, but that she was employing falsehood to poison the mind of Miss Munro?

I cannot, with all these inconsistencies, and weighing the whole with the manner in which Miss Cumming gave her evidence, have any hesitation in saying that I reject it altogether. I am sorry for it, respectably connected as she is.

Nothing then remains but the evidence of Miss Munro, for I will not dignify with the name of evidence the testimonies of Mary Brown and Miss Stirling.

Miss Munro's mind was in a morbid state, she was worked on by the superior address of another; for it is a jest to say, that Miss Cumming shewed less talent than Miss Munro: The whole Court must remember that Miss Cumming was the ablest: Miss Munro beautiful and interesting as she certainly was, had less talent than the other, and appeared to me to be rather of a weak mind.

Now, my Lords, what does she swear to? For I lay out of my mind the fright which she got, when in the situation of a person terrified in a dark night, who thinks she sees a ghost, when she sees any thing uncommon; or like a hypochondriacal person, who imagines things that have no existence.

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She saw one person come to the bed of another, both females,—the one asks the other to come into bed; and she thinks that a proof of guilt. If her mind had not been perverted, how could she possibly have thought so? I ask what would have been her impression, if her mind had not been perverted? I say that if it had not, she would have forgot the circumstance, in twenty-four hours.

I beg your Lordships to look at page 49. A., where there is a remarkable instance of this. I mean what she says of the kissing and caressing there mentioned, that was not seen by her alone, but by every girl in the school, but not one of them but herself thought it more than ordinary female friendship, excepting Miss Munro,—the amiable, the innocent, the virtuous Miss Munro, for so she is called, and such I believe her to be, considered these things as more than the result of ordinary female friendship. If this is not proof of her mind having been corrupted by Miss Cumming, I don't know what would be so. I cannot get over it. I believe Miss Munro to be a true witness. I have not the least suspicion of her veracity; but I believe that her mind was distempered, that it was filled and abused with erroneous impressions,—that she was in the situation of Othello, so well described by Shakespeare. She says, that Miss Cumming and Miss Stirling had said that it was more than ordinary female friendship. I believe that Miss Cumming might have said so; but when she was brought to give her evidence, she had too much sense to repeat it to us, and said that it was not; and Miss Stirling did the same thing.

With regard to Miss Stirling, she was wakened one night, and that was the only thing she swears to; but surely the circumstances that she depones to, cannot be held as affording the smallest presumption of guilt against the pursuers. She says nothing of her own knowledge that can bear such an interpretation, though she tells some things which were mentioned to her by the others, but these must just rest upon their testimony.

As to Charlotte Whiffin, whose evidence remains to be considered, in the *last* place, I confess, that I am persuaded that this woman indulged in speaking to the young ladies in a language which she afterwards denied on her oath. If she really entertained any suspicion against the pursuers, it must have been given to her by Miss Cumming; but I don't think that she had any such

 suspicions.

suspicions. No doubt she may have spoken disrespectfully of the pursuers. We know, that people in that rank of life are looked upon with more jealousy by their domestics than those in a higher station are, and particularly when encouraged by the ladies to do so, she would be very apt to speak disrespectfully of them, and to that extent, I dare say she would; but to whatever extent she might, I don't think that her perjury can do the smallest harm to the pursuers. In many cases, such a thing may afford a strong presumption against a party. If a party accused of a crime says that he was in a different part of the country at the time, and brings forward witnesses to prove it, then, if the *alibi* turns out to be false, it will operate very strongly against him, because he brings witnesses to swear to what he knows not to be truth. The fact is consistent with his knowledge, and he must be considered as implicated in the guilt of the witnesses, and to have had recourse to perjury, in order to get quit of the charge; but this case is quite different here, for the ladies had no opportunity of knowing what Charlotte Whiffin had said.

The *last* point is as to the conduct of the pursuers themselves when this accusation was first brought against them. I don't now speak of their general character, though, by the bye, it is strange to hear the defender say, that you must receive with great suspicion, the evidence of Mrs Woods. I was present when she gave that evidence, and so satisfied was I of her truth, that I would believe her against a thousand witnesses. But the matter does not rest on her at all; it rests on the letters which have been produced, and which prove, to my thorough conviction, that she was of an amiable and virtuous mind; and the same thing is made out as to Miss Pirie.

At first the charge was made without any name. And, what did the pursuers do? They were most anxious to have it spoken of; and they beseeched Lady Cumming to tell what it was, which she declined to do. Afterwards they were visited by Lady Cunynghame and Miss Drysdale, and then Miss Woods prayed her to find out of what she and her partner were accused. If a doubt had remained,—and a doubt does not remain on my mind as to the other points of the case,—I do not hesitate to say, that this would have removed it. A woman who behaved in that way must have been conscious that she never could be accused of such a crime as has been laid to her charge. It is not in human nature

ture that she could have behaved in this manner to Miss Drysdale, if she had been guilty, or even if she had thought that she could be accused of it.

In concluding, I may say, that I am very sorry for the consequences to Lady Cumming Gordon; but that does not in the smallest degree weaken the opinion I have formed as to the merits of the case, and as to the judgment which the Court should pronounce.

LORD ROBERTSON.

26th February 1812.

THE last time this case was before us, I stated, at very considerable length, those views of the proof, and considerations on the whole case, which led me to think that the first defence of Lady Cumming Gordon, should be sustained. I said at the same time, that I did so with great hesitation and considerable doubt, and as I entertained these doubts, I was led to pay the greater attention to the papers now before us, in order to detect any thing erroneous in the views which I then entertained. But the result of that examination of the case, has been that of completely confirming my former opinion. I don't mean to trouble your Lordships with at all entering into the proof upon this occasion, if I were to do so, I would just have to go over again what I stated formerly, for which I don't see any occasion. I shall only say, that notwithstanding all the ingenuity which had been displayed, not merely by the gentlemen at the bar, but by those of your Lordships who differ from me: I give my opinion with less doubt now than I formerly did.

LORD GLENLEE.

26th February 1815.

IT was proper that the Judges should all give their opinions at full length on the former occasion, in order that it might be properly understood on what grounds we proceeded. But there is no occasion for doing so again, unless some of us have changed our opinions. That is not my case, and if I had been to change my opinion at all, it would still have been quite different from any thing I have heard; but so far from doubting of the opinion I formerly expressed, all that I have heard only confirms it the more.

It has been proved satisfactorily, that while Miss Woods slept with Miss Munro in 1810, Miss Pirie came into the bed and lay a long time above her, and made the bed shake. It is also proved, that on another night she did the same thing. These facts are proved by all the evidence that is necessary for the conviction of a Judge. Whether you choose to consider that as a full proof of *venus nefanda*, I do not know. Very likely it is not. But I don't see the ground on which we are to tie down Lady Cumming Gordon to such an accusation. That was not what she said. All that she said, was merely that the pursuers had been guilty of gross immorality and shameless indecency; and if any of these women behaved in the manner here stated, no matter whether it was *venus nefanda* or not, I think there can be no hesitation in sustaining the defence. I will not enter into the evidence again: I did so fully on the former occasion. Lord Gillies has fairly stated the alternative to which the Court is reduced; as to whether the guilt of the pursuers, or the invention of Miss Cumming, is most improbable. But I differ from his lordship in the answer to that question; for I will say, that, to my mind, it is infinitely more probable that the pursuers should

have been guilty of the offence charged against them, than that Miss Cumming, even supposing her to have been ever so much corrupted in her morals, should have been able to invent such a story.

As to Miss Munro, I think it is perfectly clear, that nothing could have made her think that one of these women was lying above the other, unless it had been the fact. Will any degree of influence—will any preconceived opinion account for such a complete fabrication as this must have been on any other supposition?—will any thing do it but the supposition that there was downright perjury? For my part I cannot conceive it possible to account on any other supposition, but one of these, for her saying that the one of them was above the other; though at the same time I have no sort of doubt, indeed I think it extremely possible, that when she says they fondled one another too much, she may have been drawing an unfounded inference, in consequence of what she knew of the other parts of their conduct. After that, she might have misinterpreted any thing that she saw passing during the day, but that will never account for what is said in the other parts of her deposition.

I dare say, that when Miss Stirling delivered her evidence, she had no kind of idea that what she was describing indicated too great a degree of fondness between them. But I don't doubt, that if she had those conversations which she depones to, it is impossible that either she or the others could see almost any kind of intercourse pass between them, without being prejudiced against them. I admit all that, and that it would require to be attended to very particularly if the whole case rested there. But that it does not, we have the evidence of Miss Cumming; and I see nothing against what she says. To me it is really matter of astonishment, that after the length and severity of the examination she underwent, she was not betrayed into many more inconsistencies than have been alleged against her. And compare Miss Stirling's inaccuracy with that of Miss Cumming: She remembers that Miss Cumming was in the garden when they were talking to each other, but yet she does not remember that they were walking together at that time.

The only other thing which I shall mention, is relative to the supposed influence of Miss Cumming over Miss Munro. Suppose Miss Cumming to have been as corrupted as they say she was, and as I have no idea that she was, and that she had a certain

tain degree of influence over Miss Munro, yet to me it is quite plain, that it is wrong to say that Miss Munro had no idea of improprieties between the pursuers, before Miss Cumming spoke to her on the subject. It is said, that she mentioned the fright to Miss Cumming, before any of Miss Cumming's occasions. But there is no truth in that, if you read the whole deposition attentively, it appears clearly, that she never mentioned the one, till she mentioned the other. But at the same time, innocent as Miss Munro was, and as most young women at her time of life must be, it is nonsense to say, that she did not think that there was any thing wrong in it; and that, if she did think it was wrong, it gave any sort of sanction to the idea, that her mind was contaminated. It conveys no proof of contamination in the mind of a person, that she suspects such things as she describes in her deposition to be wrong.

On the whole, I am quite satisfied that the pursuers are guilty to the extent described in the two articles.

LORD JUSTICE-CLERK (BOYLE.)

26th February 1812.

IN forming my opinion on this case, it was my duty to pay all the attention in my power to the depositions and to the pleadings upon them; and after the most careful and anxious consideration of every thing that has been argued, and of the state of the process, I came to form the opinion which I formerly took the liberty to deliver. Since that time, the case has come back before us, and we have had the painful, and I will say, the disgusting duty of going again through the details of a case, which is certainly unparalelled in any court, since the creation of the world.

I have read every syllable contained in these written pleadings; but I have not been led to change my opinion, by any of the views of the parties; and I have again read the evidence from beginning to end, and as the result of my having done so, is, that I am fully confirmed in the opinion I formerly delivered, I would not think it necessary to go over the grounds of it again, if it were not, that I see propositions laid down in the papers, and particularly in the answers, to which it is impossible for me to give my assent.

In the first place, let us consider the nature of the qu stion. If I could persuade myself that we were here called on, merely to consider, whether Lady Cumming Gordon was justified or not, for withdrawing all her own dependants and relations from this school, on account of misconduct on the part of the teachers, I would freely state to your Lordships, that if it could be established to me, as I hold it to be in this case, that the mistresses of the school, were in the practice of coming into each other's

rooms in the night time, for whatever lawful purpose, talking together for instance, and when there either sitting down, or lying down, and giving offence or disturbance to the scholars: If that had been the foundation of the question, I would have had no hesitation in saying, that on much slighter evidence than what has been produced in this case, we ought to adhere. But that is not the defence. The defence which Lady Cumming Gordon has pleaded, and on which she rests her hopes of acquittal in this case, is, that the pursuers perpetrated together, acts of gross immorality and shameless indecency, and that they did so in the presence of, and in bed with their scholars.

This is not a question, therefore, as to mere indiscretion. It is not a question of decorum, nor of deviation from those strict rules of propriety which the pursuers ought to have observed, but it is a question of the deepest guilt.

The defence is branched out in the condescendence; the accusations are detailed in the statement before the Court, and they are attempted to be confirmed by proof, and then they are pleaded on with great eloquence and ability.

(His Lordship here read the material averments in the defenders condescendence.)

Such are the charges which are put on the record of the Court. They amount to a charge of the deepest guilt, if they amount to any thing at all; and I did formerly state to your Lordships, that I did not conceive myself entitled to look at any thing else. That we had no right to look into charges of mere indiscretion, but of actual guilt. That is the only question which we have to decide, and it is the most disgusting question that ever came before a Court of Justice.

Now, my Lords, it has occurred to me from the first, that in judging of such a charge as this, the first question is to consider what are the moral and physical probabilities of its being true? But this is a point, on which I need not detain your Lordships, after the very able manner in which it has been stated by Lord Woodhouselee, in his most eloquent speech; but I will say to your Lordships, that when I recollect the nature of the case, the *locus delicti*, the time, manner, and circumstances, in which the acts alleged are said to have been done; the situation in which the pursuers stood to each other at the time, and both before and after it, and their conduct after it was brought to light; I do state to your Lordships with as much confidence, as I ever stated any thing whatever, that a more improbable or unlikely accusation never in my apprehension came before a court of justice.

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The next thing I will observe, is, that it excited great disgust, in my mind, to see an attempt made in the answers, to show that in such a case, the Court is not entitled to adopt as a maxim, that in deciding on such a charge as this, we ought to require the strongest of all possible evidence. The worse the charge against any person is, the clearer ought to be the evidence on which he is to be condemned; but, according to the pleadings of the defender in this case, if I understand them rightly, it is on the principle, that you are to take presumptions into your consideration, and decide upon them, rather than upon the evidence of testimony, that you ought to proceed in considering such a case. I differ *toto cœlo* from this maxim. I hold that the proof in such a case, ought to be *luce clarius*, and that we have no right to proceed upon presumptions at all. The testimony brought to support it, ought to be free from the slightest shadow of suspicion.

Now, my Lords, I will say, for it is in vain, and it would be wrong to disguise any feeling you may entertain in considering such a question, thata fter the most careful review of Miss Cumming's evidence, that, looking to the many inconsistencies, contradictions, prevarications, and I will say the direct falsehood visible in many parts of her deposition, over and above the strong objection which, I think, lay to her testimony altogether, from the direct and strong interest which she unquestionably has in the issue of the case, are quite enough to satisfy me, that it is entitled to no sort of regard.

One instance of this sort of falsehood in her testimony is, where you find her swearing in the most positive terms, and giving the most direct evidence that she saw them on one occasion, and sat up in her bed in order to look at them, and that they had nothing but their night-shifts on; she is quite positive as to this; but thirty pages afterwards, you find a qualification put into her deposition, where she says, that what she means by their night-shifts, was their night things in general. But when you consider the subjects to which she was deponing at the time, and look to the rest of her testimony, you must be quite satisfied, that notwithstanding the qualification here introduced, she meant to say at first just what she did say, that they had nothing on but their night-shifts.

There are innumerable other instances which I might point out to your Lordships, of this kind of thing; but if the fact is,—and I really must own, that notwithstanding what Lord Glenlee has said, I have not heard any of your Lordships say that you give

gave full credit to the whole of what she says,—and if the fact therefore is, that your Lordships think you cannot build upon her testimony, as I presume is the general opinion, then I must say that I can never subscribe to another position laid down in the answers, that, without the evidence of Miss Cumming, the case is made out. I do state to your Lordships, that after the most careful examination of Miss Munro's evidence, after seeing that she had had her first communication, with regard to the alleged criminality of the pursuers, from Miss Cumming and looking to that as the source of her suspicions, and as what she states led to her watching them; I cannot conceive but that she was from the beginning a witness whose mind had been misled and tainted with regard to the actions of the pursuers. I had occasion to point out to your Lordships many palpable contradictions in the evidence of Miss Munro when the case was first before us; many in which she absolutely prevaricated, and many in which Miss Stirling contradicted her; and is not she one of the persons on whose evidence your Lordships are required to build your opinions in this case?

Now, my Lords, I see that, in many points, Miss Munro is wrong, and not only contradicted by Miss Stirling, but by the real evidence of the case; and particularly so as to the averment which she makes with regard to the whole school seeing the alleged fondling between the two pursuers. And, my Lords, when you take these matters into your consideration, I ask you, whether you see one fact made out at all inconsistent to the idea of innocence on the part of the pursuers? My Lords, I do say, that I do not, and that I cannot believe it. I feel it quite impossible to think otherwise, on considering the proof. I see so many circumstances perfectly consistent with innocence, the slightest variation in any one of which will give a totally different appearance to them. One of these is the fact deponed to with regard to Miss Pirie rubbing Miss Woods's back for the rheumatism, which is proved to have been the case. Another occasion was that in which Miss Munro awakened from a dream, as to which we have heard a great deal; and I beg your Lordships to recollect that she swears she thought she was dreaming of repeating her lesson; and can you conceive, that, when she was in such a state, that even after she rose she thought her dream was going on, I say, is it at all surprising, that in that state, half asleep half awake, she should have had a very strong impression made upon her mind by any thing which was passing,

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in consequence of the conversations which she had had with Miss Cumming.

Again, there is a remarkable circumstance which strikes one, from the whole of her evidence: from the beginning to the end of it, there is not one syllable of an indecent expression being used; and, with the exception of what she says about their lying above one another, there is not one syllable with regard to the kissing and dalliance of which you heard so much in Miss Cumming's deposition. I ask your Lordships, if it is possible to believe, that, without the assistance of the evidence of Miss Cumming, any thing which is stated by Miss Munro will warrant your Lordships in sustaining the defence which is set up?

There is a circumstance which has very great weight with me: it is at p. 27. of the proof, where your Lordships will see she swears, that she thinks it was a full month before the school broke up: It is about Miss Anstruther going home to sleep, and on these occasions, the witness says, Miss Woods came to sleep with the deponent as formerly. Here your Lordships have it in evidence, that at the very time when you are called upon to believe, and when, if there is any truth in the case at all, you must believe, that at this period, when, by the arrangement of their school, and Miss Anstruther's going home, they had the fullest opportunity of gratifying their inclinations quietly and secretly in the dressing-room, at that very period when these very acts of criminality must have been going on, this witness furnishes you with the strongest and most indisputable proof, that the pursuers did not avail themselves of the opportunity afforded them of doing it in secret, and without affording room for the slightest suspicion, but came without any sort of necessity to the very bed of this young woman. I hold that to be real evidence of the strongest possible nature that this whole accusation is unfounded; and if your Lordships think otherwise, you must believe that this crime was only indulged in, that it was only given way to, when there was hardly a possibility of its not being detected. I cannot believe it. This is a species of real evidence which it is impossible for my mind to get over.

I will not detain your Lordships with commenting at all on the evidence of Miss Stirling, which I own does hardly appear to me to be liable to any objection at all, and certainly no objection of the same nature, as that which the evidence of the other witnesses is liable to.

As to the evidence of Mary Brown, it is nothing but hearsay; and hearsay coming through a person of a distempered mind.

But there is another evidence in the case, I mean that of Mrs Woods, who, if there was any truth in the many instances in which the crime was said to have been committed, could not by any possibility, as your Lordships must have been satisfied, from the inspection of the house, have lain in her own bed without knowing it. It is physically impossible, that her attention should not have been roused by such things as are described by the witnesses in this case; and she swears positively, that she never did see any one part of the conduct of either of these parties, which was in the least degree improper, immoral, or indecent.

My Lords, are you not bound to look also to the actual and real situation in which the pursuers stood at the time, and have you it not distinctly proved in evidence, that for months they had refused to speak to each other, and that they ultimately separated altogether?

Now, I put this case to your Lordships: If this had been a question relative to an improper communication between a man and a woman, and it had been proved, that they were hardly on speaking terms together at the time when the offence was alleged to have been committed, would you have believed the accusation? I conceive you could not possibly have done so. But here, the accusation is much worse; it is an accusation of an unnatural crime, and it is impossible to accept slighter evidence of it.

If there is any truth in the depositions of either Miss Cumming or Miss Munro, there are three different occasions, on which, if they were guilty, they must have been satisfied, that their guilt had been detected; for, it is sworn, that they had got very broad and intelligible hints to that effect. But, was there any change whatever in their conduct?—Was there any indication on the part of any of the parties, that they had the smallest idea of any thing of the kind?—Did they ever shew any symptoms of knowing that they had been detected?—By no means; on the contrary, the very same strictness of discipline was observed,—the very same proceedings in every respect,—there is not the slightest hint of any attempt of any kind to conciliate any of the persons who might have been supposed to have

have detected them,—and it is quite impossible for me to believe, that if they had been guilty, they could have failed to endeavour to avail themselves of the many opportunities which they could not but have, to endeavour to regain the good will of some, at least, of the parties who were supposed to have detected them. I say it is quite impossible not to give weight to such a circumstance as this. If there had been the slightest degree of guilt, or even of indiscretion, you must have seen something of this kind.

I shall not dwell on the evidence of character which we have in this case; but I certainly think, that if ever there was a case in which such evidence ought to be attended to, it is such a case as the pesent. If ever there was a case in which the parties accused were entitled to derive benefit from their conduct in other respects, it is the case now before the Court; and, I do own, that on considering the whole of that conduct, it confirms, in the strongest manner, the opinion which I have formed on considering the other parts of the evidence. I am for altering the interlocutor.

Lord Meadowbank

NOTES

OF

The SPEECHES of LORDS ROBERTSON, GLENLEE, NEWTON and POLKEMMET,

AT ADVISING THE CASE,

WOODS AND PIRIE,

AGAINST

LADY CUMING GORDON.

LORD ROBERTSON.

IN giving my opinion on this extraordinary and distressing case, I feel that it is the most painful duty I ever have been called on to perform, since I had the honour of sitting on this Bench. No cause ever interested my feelings, or fixed my attention so powerfully; and after all the pains I have bestowed to get at the truth, I find it extremely difficult to come to any conclusion which is perfectly satisfactory to my own mind. I feel this difficulty the more, as the opinion which I have formed, differs so widely in almost every particular from that of the learned Judge (Lord Meadowbank) who has just spoken.

The summons, at the instance of the pursuers, sets forth, 'That 'their good name, character and reputation, have been unjustly 'and cruelly defamed and injured, by Dame Helen Cumming 'Gordon, relict of the deceased Sir Alexander Cumming Gordon 'of Altyre and Gordonston, Bart. defender, by means of false, in-'jurious, and defamatory allegations and insinuations, contained 'in cards written by her Ladyship, to several of the parents, rela-'tions or guardians of the young ladies entrusted to the pursuers 'care; and also by means of false, injurious, and defamatory re-'ports, raised or propagated by the said defender; which allega-'tions, insinuations and reports, were to the effect that the pursu-'ers had been guilty of some very improper or criminal conduct, 'which rendered them unfit to be trusted with the education of 'young ladies.' And they conclude for payment of a large sum, in name of damages, and as a *solatium*.

It is necessary to advert particularly to the defences, which set forth, That the defender had learned, that they (the pursuers) 'practised together acts of gross immorality and shameful inde-'cency; and that their guilt was aggravated, by the occasional 'commission of those offences, in the presence of young ladies 'intrusted to their charge.' The condescendence for the defender contains a detailed statement of those acts of gross immorality and shameful indecency, which the defender says the pursuers practised together. A proof has been allowed, and we are now

called upon to judge of the import of it. But before entering into any examination of the proof, it is necessary to attend to a point of very great importance in this case, on which the pursuers have rested much, and on which a great deal has been said by the learned Judge who has just spoken. I allude to the alleged physical impossibility of the pursuers having committed that offence, with which it is said they are charged.

Argument of pursuers founded on a total misapprehension of the nature of the defence,—said that defender undertakes to prove, that the pursuers had an unnatural connection with each other, by which the venereal appetite was gratified,—that without a particular conformation of the parts, such connection was physicially impossible,—and that two women should be found, who both had that preternatural formation, which could render both capable of such act, was utterly impossible. But that is not Lady Gordon's defence:—there is no averment in any part of her written pleadings, that the pursuers had, by actual penetration, by means of a preternatural conformation of parts, consummated any act, by which the venereal appetite was gratified: her defence is, That they practised together acts of gross immorality and shameful indecency, such as she has specified in her condescendence. Nothing in this physically impossible,—nothing which required any preternatural conformation; and yet, if these things are proved, can any one doubt that she has made out her defence?

Said that some of these things which have been condescended on could produce gratification of the venereal passion.—I care not whether these acts tended to produce gratification, or whether they were used merely for the purpose of excitement: the pursuers did all they could for the purpose of gratification, if they imitated *quantum in iis erat*, the action of a man and woman *in coitu*: then, whether it was attended with complete gratification or not, it was an act of gross immorality and shameful indecency.

Nay, the defender might have made out her case without proving that they were in contact with each other. Suppose it had been proved that they read obscene books aloud to each other, or habitually amused themselves with looking at obscene prints; Can any body doubt, that if such things had been proved, the defender would have been justified, and more than justified, in every thing she had done? In short, whether the facts condescended on led to gratification, or only to excitement, is of no consequence; they are acts of gross immorality and shameful indecency;

cy; and if your Lordships are satisfied that they are proved, the defender has established her defence.

In considering the proof, I do not mean to enter into any minute detail: I am unwilling to consume your time, or pollute your ears, with quoting much of it. It was led with peculiar care by a quorum of the Court; the import of it was well stated at the Bar, and it has been well studied by your Lordships. With the details of it your Lordships are now quite familiar; and I think it appears clear from it, that the pursuers went to bed to each other,—that they toyed with each other, and kissed each other,—that the one lay above the other on several occasions,—that while in that situation, their bodies were agitated and moving, and that one or both was breathing high and quick. Upon the most attentive consideration of the proof, I am satisfied that all these things have been made out by the evidence of Miss Cumming and Miss Munro; and the evidence of Miss Munro was confirmed by that of Mary Brown, to whom she communicated the circumstances *de recenti* as they happened, with that reluctance which might be expected in a matter of so much delicacy. Munro and Cumming swear to frequent communications with the maid Charlotte on the subject; and Miss Stirling, a witness above all exception, does the same. Charlotte, to be sure, denies all this; but, I have no hesitation in saying, that I give no credit to her testimony, in opposition to that of the witnesses whom I have now mentioned.

The pursuers endeavour to take off the weight of the positive evidence of the defender's witnesses, by urging the great moral improbability of their being guilty. On this head, I give the pursuers the full benefit of every thing they have urged,—general good character,—decency of manners,—estimation in which they were held by respectable people,—their moral and religious conduct,—and lastly, the situation in which they stood, as intrusted with the education of young ladies, and with the superintendence of their moral and religious conduct.—All these are greatly in their favour, but they cannot outweigh the positive testimony of credible witnesses; the moral improbability of guilt increases with the enormity of the crime, but it can have no other effect than to induce the Court to examine the evidence with the more scrupulous accuracy.

But while I give the pursuers full credit for the moral improbability which they urge in their favour, I cannot shut my eyes to the moral improbability which stares me in the face on the other

other side. If the defenders witnesses are discredited, we must believe, that two young girls of sixteen, the age of innocence, of purity and of candour, have entered into a most abominable conspiracy, to ruin the fortunes, and to overwhelm with infamy two young women, from whom they have received no injury; and that they have supported this atrocious conspiracy by wilful and deliberate perjury. What is the story which these children (according to the hypothesis of the pursuers) have invented? Not an ordinary offence, such as may be supposed to have fallen under their observation; but they have, from their own imaginations, devised a story of an offence, which the pursuers say, it is physically impossible they could commit, and which was never before heard of. The witnesses have told your Lordships what they have seen, and heard, and observed; but it is morally impossible that they could have invented these things, if they never had existed.

But this is not all: no motive has been assigned, or attempted to be assigned, sufficient to account for their acting so diabolical a part; and yet we are seriously called on to believe, that two girls of sixteen, have, without any motive, entered into one of the most abominable conspiracies that ever disgraced the most profligate and abandoned of mankind, and have supported it by the most deliberate perjury. If there had been any conspiracy to make a false accusation, it would have been concealed from the pursuers with the utmost care, and yet Munro and Cumming concur in swearing, that they agreed to give Miss Pirie a hint that they were aware of what was going on.

The pursuers say, that, Miss Munro's mind was poisoned by Miss Cumming; but it is most important to observe, that it was not either from her own ideas, or from any communication with Miss Cumming, that she was led to suppose, that there was any thing improper in what she had observed; for being interrogated, State p. 61, 'Whether at the time of the first occasion she had 'formed any opinion, that there was any thing wicked or im-'proper going on between the pursuers? she expressly swears, p. 62. 'That she did not, and it was only from what her nursery-'maid Mary Brown said, that she first suspected that there was 'something wicked or improper.' And this is confirmed by Mary Brown, p. 66.

Miss Cumming was received *cum nota*; and on account of her connection with the defender, and dependence on her family, her evidence must be received with caution. I think there is some confusion

confusion in part of her evidence, but not sufficient to shake her credibility as to the main point. I never could lay out of my view, the very particular circumstances in which she was examined: the length of the examination was quite unexampled, and the cross-examination conducted with a degree of ability by the most eminent counsel, such as could scarcely fail to produce embarrassment, and even some confusion, in the mind of a young girl. She swears to four or five different occasions when the pursuers were in bed together; but it is surely extremely difficult to distinguish the subordinate circumstances which occurred on these different occasions, as distinguished from each other. If she had been examined as to different events or incidents, not connected with, or resembling each other, she would not have confounded the one with the other; but she was examined as to an intercourse of the same general description which took place on four or five different occasions. The great and essential points are the same, and as to these, there is no inconsistency. The minute and less important circumstances attending each of these interviews, may have differed, and witness may have confounded what passed on one occasion, with what happened at another, without impeaching her credibility as to the main points. The very circumstance of having been so often interrogated, may have occasioned some confusion as to the less important matters. There is also some confusion as to what this witness says, about having felt the legs both of Pirie and Woods, and that the one was above the other; but I can believe, that she swears very truly what she felt, without being able to describe very accurately the relative positions of her own limbs, and those of the pursuers.

The pursuers have dwelt much on the great improbability of their being engaged in a criminal intercourse, such as that which the defender alleges they were carrying on, at the very time when it is clearly proved that they were living in a state of enmity and hostility with each other. I would feel the force of this argument, if their enmity were of that description as to produce coldness, and reserve and distrust; but no such thing appears. At this very time, Miss Pirie entertained the warmest and even the most enthusiastic affection for Miss Woods. Of this the pursuers themselves have furnished the most decisive evidence, in the remarkable letter, which is dated the 12th of October 1810, and which is to be found in the 139th page of the State. This is

not the language of enmity or alienation: it is the language of strong, warm, and unextinguished affection.

Pursuers have admitted, that they frequently went, in the night time, when the scholars were asleep, to each other's bed-sides to converse. They account for this, by saying, that they were so fully occupied, they had no other time for conversing about their differences. This is very lame. But, it may be asked, Was the time of the pursuers more occupied than in other boarding-schools? Could they find no fitter season for discussing matters of so much importance? Miss Pirie was in the habit of sitting up late. Could they not have found an hour after supper for conversing before they went to bed?

Before concluding, I must take notice of one circumstance, which makes a strong impression upon my mind, which is, that the pursuers have failed to bring forward evidence to contradict the defender's witnesses. Miss Munro, (State, p. 56.), says, on one occasion, Miss Edgar must have seen Miss Pirie go out of the room, and that she laughed. Miss Edgar is not brought forward to contradict this statement. Miss Cumming again, (State, p. 74.), refers to Miss Cunynghame; Why is not she brought forward? It is true, Lady Cunynghame says, that her daughter knew nothing; but why was not Miss Cunynghame brought to contradict Miss Cumming? and if she had done so, this would have been material. The pursuers knew well of what importance it would be to their cause, if the credibility of Miss Cumming and Miss Munro could be shaken; but they were also aware that a confirmation of their testimony would be ruinous.

LORD GLENLEE.

SINCE I came into Court to-day, my feelings are very much changed, and are much more at ease than they were; for I had formed an opinion in all respects so like that of Lord Robertson, and was prepared to deliver it in language so nearly the same, that I might refer to his Lordship's speech for my sentiments on this case. But since it may be proper, I will state the grounds of my opinion, which I do not say has been formed without doubt or hesitation; for I see, that the opinion I have formed, if it prevails, must be attended with ruin to one of the parties here. We have heard able speeches from two of the Judges, who entertain an opinion opposite to what I do; and in so contrary a light do I view it, that many of the circumstances founded on by these Judges, just decide me in my opinion against the pursuers. At the same time, I certainly do not speak of it as a perfectly clear case; but I again repeat, that, in the opinion I have formed, I agree so entirely with Lord Robertson, that even in the expression, I concur with his Lordship.

The defence, as was stated by Lord Robertson, is clear and relevant, that the defender did what she is charged with, because the pursuers were guilty of practices which rendered it unfit that the young ladies should remain under their charge. This is the first defence, and if it be proved, it is good. But the second seems to me to be quite untenable,—that even though she fail in establishihg the fact, her *bona fides* will protect her; because she acted on the information of others. For if the information be so good, that she was justified in acting upon it, this falls into the first defence; but if her information be false, her *bona fides* cannot protect her from a pecuniary compensation; she must repair the damage which she has occasioned by acting on the false information of others.

The whole defence depends clearly upon what evidence there is of the practices alleged; and here it may be necessary to say something upon a point which I did not suppose could be doubted. It has been argued, that it is necessary that the defender

should prove that the lewd fit should terminate in gratification, or that there should be a crisis, like that of a woman in the embraces of a man, otherwise that it is only coarse toying, very improper, but nothing immoral or indecent. But this will not do. This is not the defence here; for I shall be quite satisfied if it be proved to me, that one of the women was on the top of the other; that they were naked or nearly so; and that this was attended by motions, as described even by Miss Munro. In short, if Miss Munro's evidence be true, which certainly falls far short of Miss Cumming's, this is enough, whatever passed as to the gratification obtained, whether it was a complete gratification, a partial gratification, or no gratification at all. It is said to be physically impossible; but I have no doubt that there is great enjoyment even in the gratification afforded by the imagination, excited by postures and other circumstances, calculated to excite the passions. They may be seeking something to them unattainable, but even in this there is enjoyment: it is feasting the imagination; and I have very little doubt, that in all ages, and in all countries, women have enjoyed this mode of seeking pleasure,—a very irregular and improper sensual gratification, which may perhaps even bring on the crisis. I agree with Lord Robertson also, as to the case he put of obscene books, or obscene prints. These excite the imagination, and there is gratification in it.

True, there is a moral improbability, not as to the general fact of women being guilty of these sort of practices, but of any particular woman being addicted to them, which applies in this case, especially when combined with the place where they so amused themselves. It is not only an instinct, but a law of reason, that we must trust to testimony as well for an improbable fact, as for a probable one; if we are only satisfied as to the witnesses capacity to observe, and inclination to tell the truth, we cannot refuse our assent, however improbable the event may be. An improbable fact is that which, though not impossible, is contrary to the ordinary course of events. It may, for example, be a thousand to one, that the event should not occur; but you may have evidence as to this one case, and the only consequence is, that you will examine and observe the evidence given by the witnesses, more accurately than if they were deponing to an ordinary occurrence. This is all that is meant in common language, when we say that we have a difficulty in believing the evidence offered of improbable facts.

Now,

Now, Is the fact on which the defence rests proved? At first, I own, I was apprehensive that the young ladies were in a conspiracy against their mistresses; but no one supposes this now, and I am clear that the supposition is entirely without foundation. As to the separate ground against the evidence, perjury; this is not charged against Miss Munro, and, most certainly, there is no evidence of it; to argue so from the improbability of the story she tells, is not enough. But it is said she was under the influence of prejudice: I am willing to admit this, and that she eked out her observations, by seeing every thing through the eye of prejudice. I should have supposed this must have been the case, without seeing it here, as I own I do see it. But this prejudice, by the way, was not imparted by Miss Cumming; for she says herself, that her mind was enlightened, from her conversation with Mary Brown. But attend to the nature of this prejudice, and how it arose; it arose from what they saw themselves, the facts which they themselves observed. But how far can this prejudice be supposed to extend? It may lead, indeed, to misinterpret an equivocal or dubious fact; but can any mere misconception, arising from prejudice, make Miss Munro suppose that Miss Pirie was on the top of Miss Woods, if she was not? Being both in the bed with her, she could not possibly be mistaken that she was lying on the top of the other; yet she distinctly swears to this. On the second occasion, too, there was light enough in the room for her to see Miss Pirie lying above Miss Woods. As little, surely, could mere prejudice make Miss Munro think she heard Miss Pirie speak as if she was out of bed, and say so, when she actually felt her in bed. Look at the answers to the condescendence, as to this article: it is a very strong corroboration of the girl's story. They say that Miss Pirie on this occasion,—for they seem to know perfectly the circumstance alluded to,—Miss Pirie talking about the school, reclined over the bed, and, it is very prossible, may have in part covered her body with the bedclothes. This, they say, was innocent.—Yes, it is innocent, if that were all; and if that were all, what earthly motive could they have for not saying so at the time? and why should they attempt to disguise it, by pretending she was not in bed, but only standing at the side of it? With regard to the second occasion, certainly there must have been a stronger prejudice upon her mind than on the former occasion, still nothing but direct perjury can account for the circumstances, if they be not true. Here also there is an attempt on the

part

part of the pursuers, to mislead her as to the real state of the fact: she is sent away for water into the dressing-room, and, in the mean time, Miss Pirie slips out. On the first occasion, they might think that their finesse had succeeded; that they had misled the witness; but, on the second, they could not so far deceive themselves; for, on going into the dressing room, Miss Munro purposely gave Miss Pirie a knock with her arm; and they never afterwards repeated the visit, at least so far as Miss Munro observed.

Now, this is a very remarkable fact, on the idea of the innocence of their visits, and that they were for the purpose stated in the answers; for they would have been continued, as their day occupation was the same subsequently as before that time; and according to their own statement, they could as little admit of being occupied with these differences or domestic concerns, in the day-time, subsequent to that time, as before it. On this occasion, it is said by Miss Munro, that Miss Edgar laughed. Now, although unquestionably the burden of proof lay with the defender, still it would have been most material for the pursuers to bring Miss Edgar to say that she was awake that night, but did not see Miss Pirie. The pursuers can only have been prevented from doing so by the fear that Miss Edgar would support Miss Munro, and from the thorough conviction that they were in bed together that night, as described by Miss Munro.

Both Judges have mentioned, that Miss Munro observed other occasions when they visited each other in the night-time with perfect innocence. This is the very best proof, as it appears to me, that her observation of facts was not perverted by prejudice; for having seen Miss Pirie in Miss Woods's room innocently, and not engaged in any improper practices, Miss Munro mentions this, and attributes no improper motives or actions to them. She mentions how they were employed: so that when she says that, on other occasions, Miss Pirie was in bed with them, and lying above Miss Woods, she knows perfectly well, and can distinguish when this was the case, and when it was not. There is no effect of prejudice here.

In short Miss Munro's evidence, joined with the admissions made by the pursuers, goes far to establish the defence.

As to Miss Cumming, again, it is important to attend to what is stated by the pursuers in their answers as to the last occasion, when she says she was disturbed, and spoke out to them. It is there said, that Miss Woods had been sitting up late with her

her aunt, and that when she was going to her own bed, Miss Pirie observed she had been in tears; that she kissed Miss Woods, endeavouring to compose her, which is quite innocent indeed, if this be true. It so happens, that a fit of rheumatism comes on at this time, and the rubbing takes place, which shakes the bed. They go on to say, that Miss Cumming started out of bed, and asked what was shaking the bed. They say this conduct of hers surprised them at the time, but they did not think of offering any explanation or accounting for it. Now, this is quite out of nature: When they saw the poor creature so frightened, as to start out of bed, they should, in common humanity, have said something to tranquillize her; they might have chid her for being frightened; but they should have said something; it is quite out of nature not to do so. But there is a strong circumstance against the truth of this statement of theirs; for Mrs Woods mentions the story of the difference one evening between her niece and her, and that day broke before they parted; but she says nothing as to Miss Woods having been in tears; nor is the question so much as put to her; neither does it coincide with the probable dates; for, according to her account, it was soon after the great quarrel in August; whereas Miss Cumming's account makes the last congress about the beginning of October. This puts me very much in mind of the old stories in novels, of the excuses made by the wife when caught in the act of adultery, to get out of her scrape, which generally makes the evidence against her the stronger. In short, the answers of the pursuers predispose me to believe Miss Cumming's evidence.

As to her contradictions, I cannot of course be so good a judge as those who attended at the proof; but I can discover no contradiction as to the important and fundamental articles. The most important contradiction which is alleged is, that with regard to her leg, and in what position it was lying when she felt with it both their legs. I must say, that mathematically speaking, I do not know if I could construct the problem: I have never tried, and I am sure I never shall; *first*, because it is a very disgusting subject; and, *secondly*, because I do not conceive it to be at all necessary. If she actually observed them in bed, what earthly motive could she have for inventing a false story to account for how she observed them? When we observe any thing, we never attend to the process of observation, if it be easy; the process passes so rapidly through the mind, that we

do not remark the progress or steps of the observation which gives us a certainty of the fact observed. At this moment, I see the two sides of this room. If I am asked how I saw both the sides of the room, I would say that I looked first at the one side and then to the other. In this I know I am right; but it is by reflection that I know this must have been the process, which passed so rapidly through my mind, that I did not attend to it at the time. We are not conscious of such operations of the mind; we discover them only by reflection. Now, when a witness is cross-interrogated upon a point of this kind, she is pardonable, if she calls in imagination a little to assist her recollection; and if she be led partly by imagination not to give a very intelligible view of the organ of observation, it will not militate against the fact, that she actually did observe what she has described. In short, as I believe that she did feel both, it is of no importance *how* she discovered that both were there. All the other cross-interrogations are as to matters quite foreign to the cause, except indeed as to the noise; this I really do not understand, and therefore lay it entirely out of view. As to her hesitation and different accounts she has given, as all of these are about things which do not require or admit of accurate observation at the time, any contradictions as to these do not in the least affect me. Miss Cumming makes pointed reference to all the school for the truth of some of her observations. Why were not their other scholars examined by the pursuers, to cut down her evidence? On this point also I agree with Lord Robertson.

As to the moral improbability, unquestionably it is very great, but much more has been said upon this than sound reason justifies. The practice may have arisen in the holidays, and was repeated when they resumed their separate beds. It was to be sure a stronger thing to do it in bed with another girl; but this happens but seldom; during two months, but five times in Miss Cumming's bed, and three in Miss Munro's. Nor is it necessary to suppose, that they always went even on these few occasions, with a deliberate preconceived purpose. They might be at first hurried away by their lust suddenly inflamed; and it is not unreasonable to suppose, that, finding they could do it in safety, and that the young lady did not awake, they were tempted to repeat it. This is just the progress as to the indulgence of a natural sensual passion; and even the horrible nature of a passion similar to this between men, it is well known, does not always prevent people from doing it in such an open manner as infallibly

to secure detection. In the present case, I see no evidence of their having continued the practice after they must have known they were discovered. In short, the moral improbability is not so infinitely great as has been supposed; but it should induce, and it did induce with me a more careful investigation of the evidence.

As to the argument derived from the frequency of their quarrels, I can understand perfectly well, that contemporary hatred and fondness are quite irreconcilable. But the pursuers have themselves completely removed the inference they might otherwise have drawn from this circumstance; for their productions shew that there were occasional relaxations of those enmities, followed by great fits of affection. They say themselves, that Miss Pirie kisses Miss Woods, because she was in tears, and then is quite innocent; but if there was not enough of enmity to prevent a kiss in that way, why should it be sufficient to prevent kissing in another way?

LORD NEWTON.

I HAVE taken more pains in this case, and have had more difficulty in making up my opinion, than in any other which ever came before me as a Judge. On the one hand, I see two women of respectable character accused of a crime, and on the other, two young ladies swearing distinctly and pointedly, whom I must believe, unless I charge them with wilful and corrupt perjury. I have no other alternative. The defender has no occasion to prove, that they used any machinery, or that there was an extraordinary conformation of parts: it is quite sufficient, that there are indecencies which render them unfit for the superintendence of young ladies. If you believe, that they were in each other's beds, lying above each other, and that there were motions and shakings of the bed, this is quite enough to convict them of indecencies. The monstrous improbability stuck with me, not of their being guilty of such offences, but that they should choose such a scene for it, and doing it in the way they did, in the bed with a young lady, instead of getting a bed to themselves. This, in my mind, is not solved by the answer, that it is always the custom for one of the mistresses to sleep in the room with the scholars; for I cannot help thinking, they might have got the better of this etiquette; they might, however, as has been said, have been at first hurried away into the commission of this immorality by a sudden fit of lust, without having originally any deliberate purpose of being guilty of it. But, besides, when I recollect that the story is clearly sworn to by two young ladies, and that these two girls had no passion to gratify, by inventing such an abominable story, I cannot doubt, that, however improbable it may appear, it really was so. It is true, that one of these witnesses, Miss Cumming is the grandchild of the defender, and that she was interested to support the accusation, after it was made; but what possible interest had she to trump up this story at first? What could make her say so, and that she had seen certain facts, unless they really had been so? I conceive, that nothing short of the spirit of the devil, could have induced Miss Munro and Miss Cumming to invent this story, and swear to it as they have done.

As

As to the noise, I supposed, that Miss Cumming meant to represent it as the noise previous to penetration, and that was her idea. I asked her if it took place always immediately before the motions; she said it did not. Now, this very circumstance tends to support her evidence; if she meant to swear falsely, why should she introduce a circumstance so unintelligible as this? For to me it is unaccountable, and yet, if untrue, introduced needlessly.

If the pursuers were tried for this crime, I might probably, if called upon, to decide as a juryman, return a verdict of Not proven; but, in the present shape of the question, I think enough has been established to justify Lady Cumming Gordon for every thing she has done.

Lord JUSTICE-CLERK turning to Lord POLKEMMET.

This case now comes to your Lordship's vote: Is your Lordship prepared to give your opinion now, or had you not better take some time to consider of the case?

Lord POLKEMMET.—My Lord, I have formed an opinion in this cause, and I am now ready to deliver it. My opinion is, to sustain the defences.

See
Willox Pursuers
Finding Caution to repeat
in case of Reversal

SECOND DIVISION.

MAY 29. 1812.

PET.—Misses WOODS & PIRIE,
FOR
Expences pending the Appeal.

Ja. Balfour, W. S. Agent for Petr.

Mackenzie & Innes, W. S. Agents for Respt.

Mr MACKENZIE, Clerk.

UNTO THE RIGHT HONOURABLE

THE LORDS OF COUNCIL AND SESSION,

THE

PETITION

OF

Miss MARY-ANNE WOODS, and Miss JANE PIRIE;

HUMBLY SHEWETH,

THAT in the action of damages, some time ago brought by the petitioners against Lady Cumming Gordon, your Lordships pronounced the following interlocutor: 'The Lords having resumed consideration of the petition and additional petition for the pursuers, and advised the same with answers thereto, and minutes for the parties, Alter the interlocutor reclaimed against, repel the defences proponed for the defender, find her liable in damages and expences, and allow the pursuers to put in *quam primum* a condescendence of the damages claimed by them.' Dated 26th Feb.; signed 6th Mar. 1812.

Againſt this interlocutor, the defender has been pleaſed to enter an appeal to the Houſe of Lords; and the petitioners annex hereto a copy of her petition, with the deliverance thereon.

Sect. 17. That by the late ſtatute, it is provided, that ‘ when any appeal ‘ is lodged in the Houſe of Lords, a copy of the petition of appeal ‘ ſhall be laid by the reſpondent before the Judges of the Diviſion to which the cauſe belongs; and the ſaid Diviſion, or any ‘ four of the Judges thereof, ſhall have power to regulate all matters relating to interim poſſeſſion, or execution, and payment of ‘ coſts or expences already incurred, according to their ſound ‘ diſcretion, having a juſt regard to the intereſt of parties, as they ‘ may be affected by the affirming or reverſal of the judgments appealed from.’

Under this enactment, the petitioners now humbly apply to your Lordſhips. They mean to pray your Lordſhips to reſume conſideration of the caſe, to the effect of allowing an account of the ‘ expences already incurred,’ to be given in, of modifying the account, and granting decree for payment.

Your Lordſhips have found the defender ‘ liable in damages ‘ and *expences*.’ By the manner in which the defender has entered her appeal, your Lordſhips have been prevented from ſettling the amount of the damages due to the petitioners, and decerning for the expences incurred. The petitioners do not mean to trouble your Lordſhips with that matter at preſent. But recollecting the ſhocking nature of the calumny, and the nature of the proceedings, it is hardly neceſſary to ſuggeſt that, to perſons in the ſituation of the petitioners, the expence of ſuch proceedings is a very ſerious conſideration. And in one word they ſubmit, that if there be any one caſe which has occurred ſince the paſſing of the act, in which your Lordſhips are called upon, more than in any other, to give an interim decree for expences, it is this caſe. There can be no doubt of the power of your Lordſhips under the ſtatute, and with ſubmiſſion, there can be as little of the juſtice and propriety of it.

May

May it therefore please your Lordships, to take into consideration the petition of appeal, and the order thereupon, hereto annexed; and upon consideration thereof, and of the circumstances of the case, to allow the petitioners to give in an account of the expences hitherto incurred in the proceedings before your Lordships; and upon the same being audited and modified, to decern for immediate payment thereof.

According to Juſtice, &c.

JOHN CLERK.

Edinburgh, 29th May 1812.

Between the hours of ten and twelve forenoon, this petition was intimated to Meſſrs Mackenzie and Innes, writers to the Signet, agents for the defender Lady Cumming Gordon, by delivering a copy thereof to them, before Andrew Dods and William Dalrymple, my clerks.

JA. BALFOUR.

APPEN-

APPENDIX.

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled,

The Humble PETITION and APPEAL of Dame HELEN CUMMING GORDON, Relict of Sir Alexander Cumming Gordon of Altyre and Gordonſtone, Baronet;

Sheweth,

THAT MARIANNE WOODS and JANE PIRIE as individuals, and in partnerſhip as miſtreſſes of a boarding-ſchool at Drumſheugh, near Edinburgh, raiſed an action of defamation and damages againſt your petitioner, ſetting forth, That their good name, character and reputation had been unjuſtly defamed and injured by your petitioner, and concluding that your petitioner ſhould be found liable to them in damages and expences of proceſs.

That your petitioner put in defences to the ſaid action, and the cauſe came, in the courſe of the rolls, to depend before Lord Meadowbank as Ordinary in the Outer-Houſe.

That his Lordſhip, on hearing parties on the grounds of the action, and defences, pronounced the following interlocutor: 'The Jan. 19. 1811.
'Lord Ordinary having heard parties' procurators on the grounds of 'the libel, and defences, before anſwer, appoints the defender to ſtate in writing the facts of which ſhe craves to be allowed to give in a

' condeſcendence, and requeſts the counſel preparing ſuch ſtate-
' ment to tranſmit the ſame under ſeal to the Lord Ordinary.'

Jan. 31. 1811. That his Lordſhip thereafter, of this date, pronounced the following interlocutor: ' Having repeatedly heard counſel at great
' length, and received a ſtatement in writing of the facts al-
' leged in the *viva voce* argument, of which it was craved on
' the part of the defender to be allowed to give in a condeſcen-
' dence in order to a proof, and having prepared Notes of what
' may be proper for the Ordinary to ſtate to the Diviſion at re-
' porting, makes aviſandum with the cauſe to the Lords of the
' Second Diviſion; and having tranſmitted in a ſealed cover the
' above ſtatement, and the Notes of the Lord Ordinary's report to
' the agent for the purſuers, with directions to tranſmit the ſame
' without delay to the agents for the defender, under the ſame
' precautions, to be tranſmitted by them in like manner to the
' clerk of the proceſs; appoints parties to be ready to debate at
' reporting, and allows the agents and counſel to take memoran-
' dums, but not copies of ſaid ſtatement and notes; and ordains
' the clerk of proceſs, ſo ſoon as the papers are returned to him
' by the agents for the defender, to tranſmit the ſame under a
' ſealed cover to the Lord Juſtice-Clerk, together with the pro-
' ceſs itſelf, which muſt not then be withheld by either of the par-
' ties.'

That your petitioner put in a repreſentation againſt the preceding interlocutor, and the Lord Ordinary, on adviſing the ſame, of
Feb. 9. —— this date, pronounced the following interlocutor: ' Having conſi-
' dered the repreſentation for the defender, which the Ordi-
' nary obſerves does not pray to recall the aviſandum to the Divi-
' ſion, but only craves leave to allow the repreſenter to put in a
' memorial to the Court; makes aviſandum alſo with the ſaid re-
' preſentation to the Second Diviſion, and of new appoints both
' parties to be ready to debate, in caſe the Diviſion prefer hearing
' counſel at the reporting to ordering memorials.'

That the caſe having thereafter been enrolled in the Inner-Houſe roll for the Second Diviſion of the Court, was called in preſence
16th, ſigned 17th Feb. 1811. of their Lordſhips; and, of this date, the following interlocutor was pronounced: ' Upon report of Lord Meadowbank, and ha-
' ving with ſhut doors heard the counſel for the parties in their
' own preſence, and adviſed the cauſe, the Lords, before anſwer,
' appoint the defender, between and this day ſe'ennight, to lodge
' with the clerk to this proceſs a preciſe, articulate and ſpe-
' cial condeſcendence, in terms of the act of ſederunt, of the
' facts

'facts she avers and offers to prove; and the Court directs the 'clerk to transmit the said condescendence when lodged to the 'Lord Justice-Clerk, under a sealed cover, in order to be by his 'Lordship communicated to the Judges in succession; and further 'directs the clerk to keep the process under a sealed cover, and 'not to exhibit the same to any person, except when it may be 'necessary that the procedure should be borrowed for the use of 'counsel, and in such case that it shall be lent only to the agents 'in person, and not to their clerks, and shall be put again under 'a sealed cover when returned.'

That a condescendence having been lodged for your petitioner, agreeably to the foregoing appointment, the same was ordained to be answered, by an interlocutor in these terms: 'The Lords Mar. 2. 1811. 'appoint the pursuers to give in answers to the condescendence 'for the defender, and appoint the same to be lodged and transmit-'ted to the Court under seal, in the same manner as the conde-'scendence, and that *quamprimum*.'

That their Lordships, on advising the condescendence for the petitioner, with the answers thereto for the pursuers, and heard parties' procurators thereon, of this date, pronounced the follow- Mar. 9. —— ing interlocutor: 'The Lords having resumed consideration of 'the condescendence for the defender, and answers for the pur-'suers, with what is above set forth, allow the defender a proof 'of the allegations set forth in her condescendence and minute, 'and to the pursuers a proof of the allegations contained in their 'answers, and to both parties a conjunct probation; and grant 'diligence *hinc inde*, to be reported against the first sederunt-day in 'May next; and remit to the Lord Justice-Clerk and the Lord 'Ordinary, with any other of the Judges who can conveniently 'attend to take the said proof; and dispense with the minute-'book.'

That proof was accordingly led, in terms of the foregoing interlocutor, in the course of which Margaret Dunbar, daughter of Sir Archibald Dunbar of Northfield, Baronet, and Margaret Little, a servant to Mr Raeburn at Deanhall, were adduced as witnesses for your petitioner, but were severally objected to on the part of the pursuers; and the objections having been sustained by the Lords Commissioners, a petition was presented to the Court against the interlocutors by which these objections were sustained; upon advising which, the Court pronounced this interlocutor June 6. 1811. 'The Lords having heard this petition, appoint the same to be Interlocutor of 'seen and answered, in as far as respects Miss Margaret Dunbar's the Lords of Session, 1st appealed from.

'evidence

'evidence offered by the petitioner, but, *quoad ultra*, refuse the 'desire of the petition; appoint the answers to be printed and 'boxed against this day se'ennight, with certification.'

Thereafter, answers to the foresaid petition were lodged for the pursuers; and the Court, on advising the petition and answers, pronounced the following interlocutor: 'The Lords having re-'sumed consideration of this petition, and advised the same, with 'answers thereto, refuse the desire thereof *in toto*.'

June 11. 1811. Interlocutor of the Lords of Session, 2d appealed from.

That the proof having been concluded and reported to the Court, and counsel heard thereon in presence of the said Lords, the following interlocutor was, of this date, pronounced: 'The 'Lords having advised the state of the process, writs produced, 'and testimonies of the witnesses adduced, and heard the coun-'sel for the parties in their own presence, with shut doors, 'sustain the defences, assoilzie the defender, and decern; but 'supersede extract till the first box-day in the ensuing vacation; 'and if a reclaiming petition shall be then printed, marked, and 'distributed to the Judges, under seal, supersede extract further 'till the same be disposed of; and appoint the same to be seen and 'answered, the answers to be printed, marked and distributed as 'above, against the second box-day in the ensuing vacation, un-'der an amand of forty shillings Sterling: And the Lords de-'clare, that the oath of secrecy imposed on the agents, shall ap-'ply to the petition and answers, as well as to the state of the pro-'cess already printed.'

Dated 25th, and signed 29th June 1811.

That a petition, and an additional petition having been put in for the pursuers against the preceding interlocutor, and followed with answers for your petitioner, the Lords, on advising the same, of this date, by a majority of one Judge, *i. e.* four Judges having voted for the pursuers, and three for your petitioner, pronounced the following interlocutor: 'The Lords having resumed considera-'tion of the petition, and additional petition for the pursuers, and 'advised the same, with answers thereto, and minutes for the par-'ties, alter the interlocutor reclaimed against, repel the defences 'proponed for the defender, find her liable in damages and ex-'pences; and allow the pursuers to put in, *quamprimum*, a conde-'scendence of the damages claimed by them.

Dated 26th February, signed 6th March 1812. Interlocutor of the Lords, 3d appealed from.

That your petitioner is advised, and humbly conceives, that the foresaid interlocutors of 6th and 11th June 1811, sustaining the objections to the admissibility of Margaret Little and Margaret Dunbar as witnesses; and that of the 26th February, signed 6th March 1812, repelling the petitioner's defences, and finding her liable

in

in damages and expences, are contrary to law and equity; and your petitioner being thereby aggrieved, humbly appeals from the ſame to your Lordſhips, and humbly prays,

That your Lordſhips will be pleaſed to reverſe, vary, or alter the ſaid interlocutors of the 6th and 11th June 1811, and 26th February, ſigned 6th March 1812, complained of; and that you will grant warrant for the uſual ſummons to the ſaid Marianne Wood and Jane Pirie to anſwer to the premiſes, and declare that ſervice of your Lordſhips order upon them, or upon any of their procurators or agents in the Court of Seſſion in Scotland, ſhall be deemed good ſervice; or otherwiſe, that your Lordſhips will give your petitioner ſuch relief in the premiſes as to your Lordſhips, in your great wiſdom, ſhall ſeem meet.

And your petitioners ſhall ever pray, &c.

DAVID CATHCART.

GEO. CRANSTOUN.

We, the underſigned counſel for the petitioner, hereby certify, That in the above caſe, there was a difference of opinion in the Court at pronouncing the interlocutor before complained of, dated the 26th February, and ſigned 6th March 1812, three of the Judges having voted againſt it, and four for it.

DAVID CATHCART.

GEO. CRANSTOUN.

I do hereby certify this to be a true copy of the original Appeal in the Parliament Office.

(Signed) WM. WALMISLY,
Copying Clerk of the House of Lords.

25th May 1812.

Die Martis, 17. *Martij* 1812.

Upon reading the Petition and Appeal of Dame Helen Cumming Gordon, relict of Sir Alexander Cumming Gordon of Altyre and Gordonſtone, Bart., complaining of two interlocutors of the Lords of

of Seſſion in Scotland, of the 6th and 11th of June 1811; and alſo of an interlocutor of the ſaid Lords of Seſſion, dated the 26th of February, and ſigned the 6th of March 1812, and praying that the ſame may be reverſed, varied, or amended, or that the Appellant may have ſuch other relief in the premiſes, as to this Houſe, in their Lorſhips' great wiſdom, ſhall ſeem proper; and that Marianne Woods, and Jane Pirie, as individuals, and in partnerſhip as miſtreſſes of a boarding-ſchool at Drumſheugh, near Edinburgh, may be required to anſwer the ſaid appeal: It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid Marianne Woods and Jane Pirie may have a copy of the ſaid appeal, and do put in their anſwer, or reſpective anſwers thereto, in writing, on or before Tueſday the 14th day of April next; and ſervice of this order upon the ſaid reſpondents, or upon any of their known counſel or agents in the Court of Seſſion in Scotland, ſhall be deemed good ſervice.

(Signed) GEO. ROSE, *Cler. Parliam.*

June 19, 1812.

ANS.—LADY CUMMING GORDON,

TO

PET.—MISSES WOODS & PIRIE.

MACKENZIE & INNES, W. S. *Respondent's Agents.*
JAMES BALFOUR, W. S. *Petitioners Agent.*

Mr. Mackenzie, *Clerk.*

ANSWERS

FOR

LADY CUMMING GORDON,

TO THE

PETITION of MISS MARY ANNE WOODS and MISS JANE PIRIE.

TO the merits of the action, which formerly depended before your Lordships at the instance of the petitioners against the respondent, she will not make even an allusion.—She will confine herself to stating that, after a proof conducted with singular care, and after a hearing in presence, an interlocutor was pronounced, by which 'the Lords having advised the state of the process, writs produced, and testimonies of the witnesses adduced, and heard the counsel for the parties, in their own presence, with shut

Dated 25th and signeted 29th June 1811.

Alex. Lawrie & Co., Printers.

' shut doors, sustain the defences, assoilzie the defender, and de-
' cern.' This judgment was, indeed, altered by the interlocutor, against which the respondent has entered an appeal: but, from the certificate printed in the appendix to the petition, it appears, and probably will be recollected by your Lordships, that, at pronouncing that interlocutor, there was a difference of opinion in the Court; three of your Lordships having voted against the interlocutor and four for it.

It is in these circumstances that the pursuers have applied to your Lordships, in relation to the expenses hitherto incurred by them; praying that they shall be allowed to give in an account of these expenses,—that the same should be audited and modified,—and that a decree shall be pronounced for immediate payment. The application is made under the authority of the provision in a late statute, by which your Lordships have power to regulate all matters regarding the payment of costs or expenses already incurred, ' according to your sound discretion, having a just regard to ' the interest of parties, as they may be affected by the affirming ' or reversal of the judgments appealed from.'

It is proper to mention, that lately an arrangement was made for finding security to the petitioners, with regard to all sums which may ultimately be found due to them in the action now depending in the House of Lords. The most unexceptionable security has been offered by the respondent, and agreed to on the part of the petitioners. The bond of caution has been revised, and returned to their agent; and, whenever they think proper, it will be executed.

Such being the fact, your Lordships will be pleased to consider whether or not there are sufficient grounds for the present application.

The statute does not enact that execution shall pass for expenses pending an appeal, in all cases. It is left to your Lordships to determine, according to your sound discretion, whether they shall be instantly paid, or whether their payment shall depend and be consequent on the judgment of the House of Lords, in relation to the merits of the cause. Now, as the object of the enactment was chiefly to prevent unnecessary and vexatious appeals, and partly to provide against eventual alterations in the circumstances of parties, by which their interest in the issue might be affected, it appears, with great deference, that the exercise of those powers which are bestowed

bestowed by the statute, must, in a great measure, be regulated by the following considerations.—

1. When, from the nature of a cause, it may reasonably be concluded that the unsuccessful party in this Court has appealed merely for the purpose of delaying justice,—that is a case, in which his unjustifiable purpose ought to be frustrated, so far at least as relates to the expenses incurred by his opponent; and execution should be allowed immediately to pass for payment of these expenses.

2. A party may conscientiously believe himself to be in the right, and yet your Lordships may be satisfied that his plea is utterly void of foundation, and that he has no reasonable grounds for expecting a favourable decision in the Court of Appeal. It is just that, in such circumstances, he should immediately reimburse his opponent of those expenses which have been occasioned by his maintaining an action, in which he had no *probabilis causa litigandi*.

3. Although the cause of an appellant may be of a more favourable nature, and his appeal cannot be ascribed to any improper motive, yet he may be in such circumstances as to render it doubtful whether, at the issue of the appeal, his opponent will recover his expenses. He may be a liferenter, whose income will die with himself; or he may be preparing to withdraw himself and his property beyond your Lordships jurisdiction. In these and similar cases, your Lordships, it is humbly thought, will, in the exercise of your sound discretion, see it just to award immediate payment.

On the other hand, if it be certain that a party has appealed from legitimate motives only,—if the cause, of itself, has been so extremely doubtful, that opposite judgments have been pronounced, and even the ultimate decision has not been unanimous,—and if the successful party be secured against any risk of loss from a change of circumstances,—the respondent humbly submits, that in a case of this description, if in any case, there are no sufficient grounds for exercising a power, certainly not of an ordinary kind, and which, by the very terms of the enactment bestowing it, is to be exercised with much caution.

Now, in the present case, the respondent is persuaded that your Lordships can have no doubt concerning the motives which have induced her to appeal from your decision. The cause is one, with regard to which she trusts that she will not be accused of unbecoming presumption, in hoping for a favourable decision, when it is recollected that, of the two judgments pronounced by this Court, one

was

was in favour of the respondent, and the other, from which she has appealed, was carried only by the narrowest majority. Accordingly, the petitioners do not pray your Lordships to award them damages in the meantime; but it will not be overlooked that, in a case of this nature, the expenses are only consequent on the award of damages, and may truly be said to form a part of them.

Finally, the security which the respondent is ready to find, whenever the petitioners choose, gives them an absolute certainty that, if the final decision of the cause shall be favourable to them, they will obtain full and immediate implement of the decree.

The respondent will likewise be permitted to observe that, if the petitioners were immediately to obtain the expenses hitherto incurred, and if the judgment under appeal were to be altered, as a consequence of which they would not be entitled to expenses, it is doubtful whether repetition could be effectually enforced. And your Lordships, the respondent is convinced, will not overlook this consideration; since the statute requires 'a just regard to the in-'terests of parties, as they may be affected by the affirming or re-'versal of the judgments appealed from.'

On the present subject, authorities cannot be cited; but the respondent may remind your Lordships that, in the well-known case of Snodgrass Buchanan against Buchanan and M'Nab, where the judgment of your Lordships was unanimous against the appellants, a petition from Mr. Snodgrass Buchanan, praying immediate payment of expenses, was nevertheless refused.

In respect whereof, &c.

JOHN GREENSHIELDS.

SECOND DIVISION.

NOVEMBER 30. 1819.

Mr Mackenzie

PET.—Misses WOODS and PIRIE,
To apply Judgment of House of Lords.

JAMES BALFOUR, W. S. Petitioners' Agent.

Messrs MACKENZIE and INNES, W. S. Agents for Lady CUMING GORDON.

Mr MACKENZIE, Clerk.

UNTO THE RIGHT HONOURABLE

THE LORDS OF COUNCIL AND SESSION,

THE

PETITION

OF

Miss MARY ANN WOODS and Miss JANE PIRIE, lately residing at Drumsheugh, near Edinburgh;

HUMBLY SHEWETH,

THAT the petitioners were some years ago under the very painful necessity of instituting before your Lordships an action for reparation of one of the deepest injuries that ever was inflicted on two individuals, against Lady Cuming Gordon, widow of the late Sir Alexander Cuming Gordon of Altyre and Gordonstone, Baronet.

In

P. Neill, Printer.

In this action, after a variety of procedure, your Lordships were pleased to allow the defender a proof of all the allegations set forth in her condescendence and minute, and to the pursuers a proof of the allegations contained in their answers, and to both parties a conjunct probation. A proof having been accordingly led in presence of your Lordships as commissioners, the petitioners objected to the admissibility of Margaret Little, formerly servant to Mr Raeburn at Deanhall, and of Miss Margaret Dunbar, daughter of Sir Archibald Dunbar of Northfield, Baronet, two witnesses proposed to be adduced by the defender. The objection was sustained by the Lords Commissioners, and the defender presented a petition against the judgment, and praying that the witnesses might be allowed to be examined. Upon advising this petition, your Lordships, of this date, pronounced
June 6. 1811. the following interlocutor: 'The Lords having heard this petition, 'appoint the same to be seen and answered, in so far as respects Miss 'Dunbar's evidence offered by the petitioner, but, *quoad ultra*, re- 'fuse the desire of the petition; appoint the answers to be printed 'and boxed against this day se'ennight, with certification.' And afterwards, upon advising the petition, with answers, your Lordships
— 11. — were pleased to pronounce this interlocutor: 'The Lords having re- 'sumed consideration of this petition, and advised the same, with 'answers thereto, refuse the desire thereof *in toto*.'

The proof having been concluded, was reported to your Lordships, and a hearing in presence took place; and although upon this occasion an interlocutor, unfavourable to the petitioners, was pronounced by the narrowest possible majority of the Court, your Lordships were yet pleased, upon advising a petition and additional petition for the petitioners against the interlocutor, with answers for the defen-
Dated Feb. 26. and signed Mar. 6. 1812. der, of this date, to pronounce the following interlocutor: 'The 'Lords having resumed consideration of this petition and additional 'petition for the pursuers, and advised the same, with the answers 'thereto, and minutes for the parties, alter the interlocutor com- 'plained against; repel the defences proponed for the defender; 'find her liable in damages and expences; and allow the pur- 'suers to put in, *quamprimum*, a condescendence of the damages 'claimed by them.'

Against these interlocutors of your Lordships, the defender entered an appeal to the House of Lords, which having come to be discussed, the following judgment was, of this date, pronoun-
July 12. 1819. ced: '*Die Lunæ*, 12° *Julii* 1819. Upon consideration of the 'petition and appeal of Dame Helen Cuming Gordon, relict of 'Sir Alexander Cuming Gordon of Altyre and Gordonstone, 'Baronet,

'Baronet, complaining of two interlocutors of the Lords of Session in Scotland, of the 6th and 11th June 1811, and also of an interlocutor of the said Lords of Session dated the 26th of February, and signed the 6th of March 1812; and praying, That the same might be reversed, varied, or amended, or that the appellant might have such other relief in the premises, as to this House, in their Lordships great wisdom, should seem proper: And also of the answer of Marianne Woods and Jane Pirie, put in to the said appeal; and also upon consideration of the petition of the said Dame Helen Cuming Gordon, presented to the House on the 4th of March 1816, setting forth, That this is a case of a very singular and delicate nature, and the petitioner conceives, and is advised that the cause is not stated in the complete way it ought to have been on her part in the printed case delivered to the House, which was hastily prepared; that the petitioner humbly proposes that their Lordships should give her leave to put in an additional case, within such time as may be thought proper, to be communicated to the counsel and agents of the respondents, with liberty to them to put in one on their part, if they think right; and if their Lordships approve of this course, it shall be understood, as far as the parties are concerned, that the cause is to be left to their Lordships judgment, upon the proofs printed by order of the Court of Session, and the cases *hinc inde*, without any argument by counsel at the bar; and therefore praying their Lordships to suspend farther proceedings in this cause till a day to be named after the Easter recess; and to allow an additional case to be prepared and printed, on the part of the petitioner, in the interval, with such permission to the respondents, as to giving in an additional case on their part, as is above mentioned, or as their Lordships think proper, the agents for the respondents having signed the said petition, as consenting thereto; and also upon perusing the several cases delivered in by the parties respectively, and the proof in this cause: It is ordered and adjudged by the Lords Spiritual and Temporal in Parliament assembled, That the said petition and appeal be, and is hereby dismissed this House, and that the said interlocutors therein complained of be, and the same are hereby affirmed. (Signed) HENRY COUPER.
'Dep. Cler. Parliamentor.'

This judgment is herewith produced, and the present application is made to your Lordships to apply the same. It is at the same time proper to acquaint your Lordships, that the expences found

found due by the interlocutor of the 26th of February, in so far as incurred antecedent to that date, conform to auditor's account, have been paid by the defender.

May it therefore please your Lordships to apply the above recited judgment of the House of Lords, by affirming the before recited interlocutors pronounced by your Lordships, which were appealed against; and, in conformity with the terms of the last of these, of new to find the defender liable in damages and expences to the petitioners; and allow the petitioners to put in quamprimum *a condescendence of the damages claimed by them; and to do farther in the premises as to your Lordships shall seem just.*

According to Justice, &c.

JAMES MONCRIEFF.

Edinburgh, 30*th November* 1819.—I William Barclay, clerk to James Balfour, writer to the Signet, agent for the petitioners, did duly intimate to Messrs Mackenzie and Innes, agents for the defender, That copies of the foregoing petition were this day put into the Lords boxes, in order to be moved in the Second Division of the Court to-morrow. This I did, by leaving for the said Messrs Mackenzie and Innes, within their place of business, printed copies of the said petition, with a note of intimation to the above effect thereto subjoined, before and in presence of Mungo Ponton and Robert Alexander, both writers in Edinburgh.

Wm. Barclay.

SECOND DIVISION.

JANUARY 28. 1820.

COND.—Misses WOODS & PIRIE,

AGAINST

Lady CUMING GORDON.

Jas. Balfour, W. S. Pursuers' Agent.

Mackenzie & Innes, W. S. Defender's Agents.

Mr MACKENZIE, Clerk.

Edinburgh, 1st December 1819.—The Lords having considered this Petition, with the judgment of the House of Lords referred to and produced; allow the Petitioners to put in *quamprimum*, a Condescendence of the Damages claimed by them.

(Signed) D. BOYLE, *I. P. D.*

CONDESCENDENCE

FOR

Miss MARY ANN WOODS, and Miss JANE PIRIE, lately residing at Drumseugh near Edinburgh;

AGAINST

Lady CUMING GORDON.

1. THAT at Whitsunday 1809, the pursuers entered into possession of a house at Drumseugh in the close vicinity of the New Town of Edinburgh, and began business as the mistresses of a boarding school, intended to be carried on on an extensive and liberal

P. Neill, Printer.

ral scale: That the house was furnished at great expence, which required and exhausted all the funds which the pursuers could severally command.

2. That the establishment of the school was prosecuted with extraordinary success from that time till November 1810, at which latter period it was full, and consisted of twelve regular night boarders, at the rate of L. 40 *per annum*, with liberal allowances for the various branches of education, which were taught by the pursuers, besides day scholars, of which they had at the time five, with the certain prospect of immediately obtaining the full number they intended to take, being twelve: That so great was the success which had attended their exertions, that they had come to the determination of engaging a larger house against the following term of Whitsunday, and of taking an increased number both of boarders and day scholars.

3. That the calumny for which this action was raised, did suddenly and unexpectedly produce a degree of obloquy and disgrace so grievous to the pursuers, as to overwhelm them at once, and compel them immediately to abandon their establishment. This happened shortly after the term of Martinmas 1810. Without any previous notice or preparation, the pursuers were under the necesssty of paying house-rent, servants and housekeeper's wages and board-wages, for which no return was or could be obtained: That they were farther obliged to sell their furniture, and having no other means of discharging their obligations contracted on the faith of future profits, and no other source of immediate support, they had no alternative but a sale of the said furniture without reserve. And the pursuers condescend and say, that their furniture was sold for scarcely more than one-third of its actual value, and that under these several heads they suffered a positive loss of not less than L. 450.

4. That the effect of the slander against the pursuers, for which the defender has been found liable in damages, was not only to ruin their school so established, at a moment when it possessed the certain prospect of continued prosperity, but to render it nearly, if not altogether, impossible for either of them ever to employ profitably the habits and acquirements which had been the study of their lives: That though, through the friendship and sympathy of one or two individuals,

dividuals, the pursuer Miss Woods was, after a time, enabled to earn a very scanty subsistence for herself and a near relation, an aged lady, who depended upon her exertions; the pursuer Miss Pirie, on the other hand, although also supported by friends, as she did not choose to leave her native country, was not so fortunate, and was, in point of fact, totally ruined, and has ever since been entirely disabled from employing whatever talents she may possess, and the acquirements of many years, either for her profit or for her bare sustenance: That the clear profits of the school in the half year preceding Martinmas 1810, after deducting all burdens, and although during a part of the time it was not full, amounted to upwards of L. 150, being at the rate of upwards of L. 300 *per annum*. That supposing the establishment to have gone on as it then stood, and fully promised, the annual profits of it would have come out thus:

Twelve night-boarders, for L. 40 *per annum*, -				L. 480	0	0
Branches of education taught to these boarders by Misses Woods and Pirie, - -				448	16	0
Twelve day-boarders, at L. 25 *per annum*, -	L. 300	0	0			
Branches of education taught to these boarders by Misses Woods and Pirie,	448	16	0			
				748	16	0
				L. 1677	12	0
The household-expences, under all the circumstances, would not have exceeded L. 500, but call them, - -	L. 600	0	0			
House-rent, taxes, wages, -	95	0	0			
				695	0	0
				L. 982	12	0

and this without taking into computation allowances for the use of the piano-forte, globes, &c. and a variety of perquisites, which annually amounted to a considerable sum.

That notwithstanding that the pursuers consider this to be the fair state of the fact, and condescend upon it accordingly; and although they might even have carried their claims a great deal higher, by founding, as they conceive they are well entitled to do, upon the additional profits which would have accrued to them under the increased establishment they had resolved on, yet, to avoid unnecessary disputes,

putes, they shall confine their statement of yearly profits, to the rate of sum *actually realised* by them for the half year preceding Martinmas 1810, viz. L. 300 *per annum;* and that upon this estimate they claim from that date till November 1819, L. 2700; to which must be added interest on the annual sums at the end of each year, L. 540, making in all L. 3240; being a sum greatly under the actual loss which the pursuers have sustained on this head.

5. That the pursuers, besides the loss already sustained, are entitled to compensation of the loss originating in the same causes, which they have still to suffer in the time to come. And as both of them are still considerably under the age of forty, they apprehend, that this will be very reasonably stated at a sum greatly less than would be sufficient to purchase an annuity at the rate of the income which they had a right to expect; which income, it will be observed, arose after full allowance for their own ordinary maintenance. The pursuers shall accordingly state this article at L. 3000.

"6. That besides all these grounds of damages, the pursuers have incurred a very serious expence, not covered by the decree for expences given by your Lordships, and affirmed by the House of Peers; and in particular, the whole expences in the House of Lords, including an appeal case, and an additional appeal case, ordered by the House, both of great length, must be provided for, out of any sum of damages which may be awarded to them. The actual amount of this expence is L. 783.

Lastly, the pursuers claim *solatium* for the injury to their feelings, to their health, and to their private comfort, and respectability in society. In such a case, it is hardly possible to make an adequate statement upon this head. In point of fact, it must be stated, and will be proved, that the pursuer Miss Pirie, has, in consequence of the agitation and affliction produced by the defender's calumny, suffered so severely in her health and constitution, as certainly to embitter the remainder of her days; and, in all probability, greatly to shorten her life. And though the pursuer Miss Woods, from better fortune in a few friends, has not suffered so much personal injury, the same cause has been, and will be a source of perpetual unhappiness to her, probably for her whole life. But the pursuers, assuming that they are to have a full recompence for actual loss, shall state this part of their claim at only L. 2000,—a sum which, to those who can at all enter into the state of their feelings, or estimate the situation into which,

by

by the extraordinary nature of the calumny they have been plunged, for a period of nine years, and may, to a certain extent, continue during the whole of their lives, must appear to be moderate in the extreme.

According to these data, the claim of damages stands thus:

Loss on furniture, rent, wages, &c. - -	L.	450	0 0
Loss on profits to Martinmas 1819, - -		3240	0 0
Loss on profits after that date, - - -		3000	0 0
Extra expences by account to be proved, -		783	16 5
	L.	7473	16 5
Solatium,		2000	0 0
	L.	9473	16 5

In respect whereof, &c.

JAMES MONCREIFF.

(SECOND DIVISION.)

February 12, 1820.

ANS.—LADY CUMMING GORDON,

TO

COND.—MISSES WOODS AND PIRIE.

MACKENZIE & INNES, W. S. *Respondent's Agents.*
JAMES BALFOUR, W. S. *Pursuers Agent.*

Mr. Mackenzie, *Clerk.*

'Edinburgh, 29th January 1820.—*The Lords appoint the Defender 'to give in Answers to this Condescendence within fourteen days, under an Amand of* 40*s. Sterling.*

(Signed) 'D. BOYLE, *I. P D.*'

ANSWERS

FOR

LADY CUMMING GORDON,—*Defender;*

TO

CONDESCENDENCE for Miss MARY ANN WOODS and Miss JANE PIRIE, lately residing at Drumsheugh, near Edinburgh,—*Pursuers.*

1. UPON this first head of the condescendence the respondent has nothing to remark, as it is obviously a matter with which she is wholly unacquainted.

2. This head of the condescendence consists of two branches.—The

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The *one* states the number of boarders which the pursuers actually had at the time of breaking up their school, with the rates of allowance paid by them. The *other* contains a view of the intended enlargement of their plans, and the expected future success of their operations. As to the *first* of these branches the respondent will make no denial, as she does not know the facts. But with regard to the *second* she must observe, that it is founded on suppositions of future and increasing success in their establishment highly improbable. The respondent has only to recal to your Lordships recollection the state of mutual dissension and quarrelling in which these parties, by their own account, were at that time living, to satisfy you of the extreme improbability of their even continuing together, far less of advancing their school in the public estimation.

3. In this article the pursuers state the suddenness with which they were obliged to give up their school, and the loss which this brought upon them in house-rent, servants wages, and sale of their furniture. As to this last article they say, that their furniture was sold for scarcely more than one-third of its actual value; but the reason of so very extraordinary and improbable a depreciation they have not thought proper to assign. The alleged loss under this head the respondent believes to be immensely overrated.

4. Under this head the pursuers aver, that, since the breaking up of their school, they have been unable to support themselves by their own exertions, and are, therefore, entitled to an annual allowance equivalent to the profits of their school since it was given up. On this, the first observation that occurs is, that it is admitted that one of the pursuers has been earning a subsistence during a considerable part of the above period;—and if one did so, it does not appear why the other might not have done the same, if she had made proper exertions. It is evident, that from any claim under this head must be deducted what has been made, or ought to have been made, by the pursuers private exertions.

The pursuers are pleased to exhibit a most extravagant and chimerical estimate of their profits, realized and expected. on the supposition of the continuance of their school, amounting to within a trifle of 1,000l. per annum,—a scale of profit which, it is believed, was never realized by the most flourishing establishments of that nature in this city. But apparently conscious of the absurdity of such an attempt, they afterwards restrict their claim to 800l. *per annum*, which they aver was the rate of profit made by them for the

the half-year immediately preceding the close of their establishment. This claim, with annual interest since Martinmas 1810, amounts to no less a sum than 3,240l.

On this the respondent must observe, in the *first* place, that she has no means of knowing whether the rate of profits for the above half-year stated by the pursuers be true or false. But, *secondly*, even if it were true, nothing can be more fallacious than to assume that the same rate of profit would have continued for the future. The truth is, that the chief cause of the pursuers success during the above half-year was the extraordinary exertions made in their behalf by the respondent and her friends. But altogether independently of the imputations which made the subject of this painful process, the pursuers, by their own account, had fallen into such perpetual dissension and squabbling, that nothing was more unlikely than the continuance of their establishment, with any satisfaction either to themselves or their employers. If they had been obliged to give it up, and had returned to their former situation of governesses in private families, the annual allowance which they claim as their supposed profits is evidently far too high.

5. The pursuers next contend, that they are entitled, in name of damages from the respondent, to the same annual allowance of 300l. during the whole of their lives to come.—A sum equal to the purchase of such an annuity, at their age, they state to be 3,000l.

Now, waving at present all considerations on the principle of this demand, the respondent must remark, that it is liable, in a still stronger degree, to both of the objections made against the last. For, *first*, It proceeds on the supposition that the pursuers,—but for the circumstances which gave rise to this process,—would have continued to make 300l. per annum, on an average, for the whole period of their lives: and, *secondly*, It omits to give deduction of what the pursuers may be reasonably supposed henceforth to make by their own exertions. Now, if the decision lately pronounced by the House of Lords has cleared the character of the pursuers in the opinion of the world, (and surely they will not maintain the contrary), what is to prevent them from making as much by their own exertions as if the present process had never taken place?

It does not appear, therefore, on any principles which can be assumed by the pursuers, that they are entitled to any compensation for a future period. But, independently of this, the respondent

ent doubts if it ever was before heard of, in a claim of damage, that parties were not only to be allowed a full compensation for what they suffered at the time, but were to extend their claim, by a sort of fanciful and hypothetical estimation, throughout the whole period of their after lives.

6. Under this head the pursuers claim the sum of 783l. as the costs of their appeal to the House of Lords. The respondent believes that so extraordinary a claim scarcely ever was made. If the House of Lords had thought that, in the circumstances of the case, costs were due, they were perfectly able to have given costs themselves. They did not, however, give them, and thereby plainly intimated that none should be given. Nay, the counsel for the pursuers did not even venture to move for costs in the House of Lords, which plainly shewed that they were sensible that none would be given. And now, after the Supreme Tribunal of the country has, by implication, refused costs, the pursuers call upon your Lordships, who are a subordinate Court, to give these costs in the shape of damages. It is believed that nothing so irregular was ever before attempted.

7. The last claim of the pursuers is for 2,000l. in name of *solatium* for injury to their feelings. But in regard to this matter, and, indeed, in regard to the general amount of every claim of damages, three important considerations are to be taken into account, which the respondent will shortly state.

1*st*, The conduct of the party pursuing. Where the pursuers, as in this case, though acquitted of the actual charge made against them in its most aggravated form, have been proved guilty of such improprieties, irregularities, or even imprudences, as to excite suspicion, and to lead others to form unfavourable constructions of their conduct, they are not entitled to the same compensation as if they had acted with perfect propriety, and had given no ground whatever for misconstruction.

The respondent need not state to your Lordships how strongly the pursuers fall under the unfavourable predicament just supposed. She will not now resume those painful investigations and discussions which the proof formerly taken in this case rendered necessary. But she will openly declare, that, however free the pursuers might be from actual guilt, the conduct which was proved against them by the most unquestionable evidence, and which they themselves were forced to admit, was marked by the grossest impropriety,—was calculated to excite the worst suspicions in those who

who saw it, or heard it described, and naturally led to those conclusions which the respondent formed with regard to it. Those suspicious circumstances, as your Lordships know, were not only sufficient to fix the opinion of the respondent, but, upon one occasion, to fix the opinion of a majority of this Court, whose first judgment assoilzied the respondent. Conduct on the part of the pursuers, which led to such conclusions in such minds, must, to say the least of it, have been in no common degree suspicious and reprehensible, and must greatly diminish any claim of damages competent to them.

2dly, The same principle applies with equal force to the conduct of the party pursued. Where the calumny alleged has taken place from premeditated malignity, or even from rashness, carelessness, wantonness, or a love of tattling;—where the party who utters it had no call or title to interfere;—in all these, and the like cases, the damages must be proportionally large. Nothing, however, can form a more perfect contrast to the cases above supposed, than the circumstances and conduct of the respondent. At the period in question, so far from having the least feeling of ill will towards the pursuers, she had been their zealous benefactor. She had intrusted to their charge her nearest connections in her own family, and had recommended them to many of her friends. So far from proceeding rashly, or wantonly, or without a proper call to interfere, in propagating a calumny, the first intimation that she received of the misconduct of the pursuers filled her with astonishment and horror. Every motive of interest, ease, or safety would have led her to be silent. Nothing but the most irresistible sense of duty induced her to speak at all; and when she did speak, she confined her intimations to those persons whom she had actually induced to place their children with the pursuers, and conveyed her warning in the most secret and inoffensive form. When to all these things is added the fact formerly mentioned, of the strong grounds which the pursuers had given the respondent to form her opinion from their own misconduct, your Lordships, it is hoped, will be satisfied that no case ever existed which less admitted of extensive damages, so far as these depend on the conduct of the party pursued.

3dly, A circumstance which is always allowed to affect the amount of damages is the fortune and means of the party who is found liable therein. Indeed, it is plain, that if this were not attended to, the penalty would fall most unequally on individuals:

and the same sum which inflicted but a trifling fine upon one party, would amount to total ruin and perpetual imprisonment on another. And this principle clearly applies to what is strictly called *loss* or *damage incurred*, as well as to *solatium*. Suppose the reports to the pursuers prejudice had been circulated solely by a servant, or other person in that rank of life, could they have seriously made such a claim as they now do for damages to the amount of nearly 10,000l.? It is plain that they could not; and, accordingly, it is well known, that in all courts of justice the means and ability of the party found liable are taken into account in apportioning the damages.

Now, the respondent avers, that her only fortune and means of living is an annuity for her life of 800l., with the liferent of a house and garden in Forres; and upon this your Lordships are left to judge how heavily will fall any sum of damages to be allowed the pursuers, in addition to the great expense of this process, and the expenses of the pursuers in the Court of Session, which the respondent has already paid in full, amounting to 943l. 0s. 7d.

The respondent cannot conclude without submitting to your Lordships the observations made by the Lord Chancellor at moving the judgment, in this case, in the House of Lords, as taken in short-hand, in which the sentiments of that distinguished Judge are very plainly implied, in regard to a temperate and moderate allowance of damages.

July 12, 1819. ‘ There is a case, in which I will move your Lordships to give ‘ judgment, without saying much upon it. It is the case of Woods ‘ and Pirie *v.* Lady Cumming Gordon,—a case of a very singular ‘ nature, and, perhaps, of such a nature that the less it is discussed publicly the better. In the first instance, the Court of Session, by their decision, held, that her Ladyship was not liable in ‘ damages at the suit of the ladies who complained. Upon reconsideration of the case, they have given a judgment, that she is ‘ liable to damages, without saying *what*, and also a judgment with ‘ respect to the testimony of some of the witnesses. My Lords, ‘ upon as attentive a consideration as I have been able to give to ‘ the circumstances of that case, it does not appear to me that ‘ there is any error in the judgment that states that the lady is ‘ liable to damages. What the damages are to be, when inquiry ‘ is made with respect to the extent of the damages which ought ‘ to be paid, is matter for future consideration; *and, undoubtedly, ‘ it will require a very temperate and a very prudent consideration*

‘ *what*

'*what damages should be given, regard being had to all the circum-*
'*stances which occur in the case*; but I do not think, whatever dif-
'ference of opinion there might be with respect to the *quantum* of
'damages, that it is possible to say that this is a case in which
'she is not liable to damages *to some extent*; and if she is liable to
'damages to some extent, it seems to me (not thinking there is
'any material objection with respect to the other ground of opi-
'nion) that the judgment ought to be affirmed.'

It is submitted to your Lordships, that words could not well be chosen more indicative of a recommendation to moderation in damages than those which have been just quoted; and there can be little doubt that the eminent person by whom they were used must have formed his opinion on that subject very much from a consideration of the circumstances of this case, and the conduct and situation of parties on both sides, above alluded to.

In respect whereof, &c.

ARCH. BELL.

Second Division.

JUNE 29. 1820.

REP.—Miss MARY ANN WOODS, &c.

TO THE

ANS.—Lady CUMING GORDON.

Jas. Balfour, W. S. Pursuers' Agent.

Mackenzie and Innes, W. S. Defender's Agents.

Mr MACKENZIE, Clerk.

Edinburgh, 11th March 1820.—The Lords having considered this Note, allow the pursuers to give in Replies against the first box-day, and the defender to give in Duplies against the second box-day in the ensuing vacation, under an amand of Forty Shillings Sterling for each.

(Signed) D. BOYLE, *I. P. D.*

REPLIES

FOR

Miss MARY ANN WOODS and Miss JANE PIRIE, lately residing at Drumsheugh near Edinburgh;

TO THE

ANSWERS for Lady CUMING GORDON.

1. THE defender is not unacquainted with the matters here stated. But, as the fact is not denied, the pursuers hold it to be admitted.

2. The defender states, that this article consists of two branches. As to the *first*, viz. the number of boarders at the time when the school was broken up, and the rates of allowance, she is pleased to say, that she 'will make no denial, as she does not know

P. Neill, Printer.

' the facts.' If the defender does not know the facts, she has had abundant opportunities of making herself acquainted with them. As she had three grandaughters at the school, all of them young women at the time, on whose information, she has said, she relied in much more serious matters, they certainly could have informed her of the number of boarders who were their companions; and, as the defender had paid the rates of allowance herself, she ought to know what they were. The pursuers must, therefore, take the answer as an express admission of the statement in the article. As to the *second* branch of this article, said to proceed on the supposition of future and increasing success, the defender is pleased to refer to the differences which existed between the pursuers at the time, as shewing the improbability of their continuing together, or far less advancing in public estimation. It is replied,–that, whatever differences existed between the pursuers, it is proved, that they never interfered with the discharge of their duties to the scholars entrusted to them; that it is proved, that those differences entirely originated in the residence of Mrs Woods in the house; that it is proved, that it had been resolved between them that Mrs Woods should cease to reside with them; and that, when that matter was arranged, there was every ground to expect, that the mutual confidence in one another, which existed notwithstanding those differences, would have met with no farther interruption. But the pursuers farther reply, that the statement in the condescendence is matter of fact, and they are ready to prove it.

3. The pursuer must know, that articles of this description, sold by auction without reserve, must be sold at an immense undervalue. There is a duty to the king of *5 per cent.* on the total value, and another allowance to the auctioneer, besides other expences attending the sale; and nobody comes to such a sale but in the expectation of getting the goods at an under value. But the furniture had all been purchased recently before: And the pursuers are ready to prove the original value, the state of the furniture when sold, the inferior prices obtained, and the charges upon the sale: In one word, they are ready to support the averment in the condescendence to its fullest extent. They believe, that the loss is rather *underrated*, than otherwise.

4. It is not stated in the condescendence, that even Miss Woods has been able to employ herself in any way to realize profits. She has been enabled to earn a *scanty* subsistence, and that is all. With regard to Miss Pirie, the pursuers will prove, that every proper

per exertion was made by herself, and by other persons of the highest respectability, to obtain a situation for her. But every endeavour was rendered unsuccessful, by the influence of the calumny which the defender had taken such effectual means to propagate against her and Miss Woods. Miss Pirie did not chuse to leave her own country; and it is rather too much, that the defender should assume that she was bound to do so. Farther, Miss Pirie's health suffered severely from the deep grief and anxiety produced by the defender's calumny, and the investigations which it rendered necessary; and she has ever since been much less capable of exertion than she was before. This also is matter of evidence, and will be proved.

The data of the calculation of the profits reasonably to be expected, as well as the calculation itself, are quite simple. The defender has the accounts for her grandaughters in her own possession; and the house-book of the pursuers is open to inspection. The only thing assumed is the complement of boarders, even without the enlarged establishment contemplated. But the school was nearly full at the time when it was broken up;—that is, the complement of night-boarders existed, and the pursuers were in actual negotiation for filling up the few vacancies of the day-boarders, and had also the certainty of completing the number; and, therefore, the pursuers are entitled to hold that the complement would soon have been obtained; and that it would, at the least, have so continued. And, however the defender may represent the statement of profits as imaginary, the pursuers assert, and will prove, not only the fact, but that, notwithstanding of those profits, their school was the cheapest of any public boarding school of note in Edinburgh. The fact is, that their profits arose from their own personal exertions, the extent of which is already in evidence. They were *teachers* as well as *boarding mistresses;* and, with the exception of dancing and writing, they taught every branch of education *themselves*, contrary to the usual practice in other similar establishments.

Though the defender did give her countenance to the school, it is denied, that the success of it at all depended on any exertions by her in favour of it. It was formerly proved, that, in the only instances condescended on by her, the parties acted entirely on the recommendation of other persons.

As to the differences between the pursuers, they have been already adverted to. They never interfered with the business of the school; and when the cause of difference was removed, they would have entirely ceased.

But, even if the possibility of a separation could be assumed, each of the pursuers had a right to expect a proportional success in

in any other undertaking of the same kind. They had both excellent friends; and their talents and accomplishments were well known to the public. It would not have been necessary, therefore, that they should return to their former situations. Their profits might even have been proportionally greater in separate establishments. But farther, even if they had returned to their former situations, a fair estimate would lead to a larger result than the loss ultimately claimed in this article.

Miss Pirie had, in the family of Mrs General Campbell, a salary of L. 80 *per annum;* and it can be proved, that it would have been raised to L. 100, if she would have remained at the time she left her charge. She also received valuable presents from the father of her pupils on his return from India. She had bed, board and washing, which could not have been obtained with the same accommodation in any respectable boarding-house, under L. 70. When these things are considered, it is pretty evident, that Miss Pirie's share of the profits of L. 300 only, would be fully made up even in this way, and with far less labour, no risk, and comparatively little anxiety. With regard to Miss Woods, again, she had been always a public teacher, in Edinburgh, and the very first in her line. Her terms were Two Guineas for twelve lessons; and she generally taught twelve hours every day.

The pursuers have restricted their claim to the profit actually realised in the year when their establishment was not full, not from any consciousness of absurdity or extravagance, as the defender pretends; but because there is nothing they so anxiously desire, as to put an end to the litigation, and to have done with the defender, by excluding a great part of the loss, which, upon any fair reckoning, they have *actually* sustained. They submit, that, upon the simple facts which they are ready to establish, it was impossible to state the loss under this article at a lower sum than L. 300 *per annum.*

5. It is apprehended, that no relevant answer has been made to this article. If the pursuers made a clear profit of L. 300 in the *first* year of their establishment, and when it was not full, they have certainly a right to assume, that, with sound constitutions, and capacities daily improving in knowledge and experience, the fruits of their labours would not have been *less* in the future years of their lives, perhaps till the age of sixty, if they did not realize an independence in a much shorter period. Every person engaged in a profession, and who is deprived of it by the wrong of another, is entitled to make this assumption, as the very *lowest* estimate.

But

But the defender is pleased to ask, If the decision of the House of Lords has cleared the character of the pursuers, what is to prevent them to make as much by their own exertions, as if the present process had never taken place?

The pursuers reply, 1*st*, That as to one of them, Miss Pirie, the injury which her constitution has sustained, which will be proved to have been solely occasioned by mental distress, is such, as to render great exertions on her part now impossible; and any candid person, who will place himself in a similar situation, will feel no surprise, that such an accusation, with all its consequences, and particularly, the impossibility of active employment, and a continued anxiety under it for nine years, should have produced such effects. But, 2*d*, No decision of the House of Lords, or any other tribunal, can ever do away the effects of such a calumny upon the public mind. The pursuers are thankful, that they have so far obtained protection from the laws of their country. But it is one of the peculiar qualities of a charge of this nature, that no proof of innocence, however clear, and no judgment of a court of law, but especially no proof or judgment which is necessarily protracted, can ever do away the first impression which the very telling of such a story produces. The defender knows this well; and the pursuers cannot but look on the observation in the answers as intended more in irony than in earnest.

As to the last observation under this head, where the defender is pleased to doubt whether the pursuers are entitled to any compensation for loss during the rest of their lives, the pursuers reply, that they are entitled to reparation of all the loss which they have *actually suffered* by the injury done to them by the defender. And as it is matter of demonstration, and what the pursuers undertake to establish, so far as necessary, that the pursuers have suffered, and are now suffering, *great* damage of the nature specified in this part of the condescendence, it is for your Lordships or a Jury to estimate the amount of it by such data as the nature of the case affords.

6. There is no novelty in the claim here made. What the pursuers maintain is, that, whatever may be the case in actions of a different nature, yet, in actions of damages, the expences of appeals to the House of Lords, in which the defender has been unsuccessful, may and ought to be awarded as part of the damages, although not allowed by the House of Lords at the time of deciding upon the appeal. To prove this, the pursuers shall refer to two cases.

The first is Fallejeff against Elphinston; the circumstances of which were shortly these: A privateer belonging to the Honour-

able William Elphinstone and others, during the American war, captured a Russian vessel under circumstances which were considered to warrant the act. It turned out, however, that in this they were mistaken; and Fallejeff, the owner of the vessel, raised an action of damages against them in the Admiralty Court, for her capture and detention. The case was afterwards brought into the Court of Session, the Judges of which ultimately assoilzied the defenders. Against this judgment the pursuer appealed, and the following is the order pronounced by the House of Lords, when the appeal was discussed: '14*th August* 1784.—Ordered 'and adjudged, That the interlocutor complained of in this appeal 'be reversed, so far as the defenders are thereby absolved; and 'it is farther ordered that the cause be remitted back to the Court 'of Session, to proceed accordingly.' When the cause came back to the Court of Session, the damages were settled, and on condescending on the amount of them, the pursuer claimed the
Mar. 11. 1788. expences of the appeal. Lord Dunsinnan, by judgments of these
Mar. 11. 1789. dates, repelled this claim, in respect that the judgment of the House of Lords had not given costs. In a petition against these interlocutors, written by President Blair, the following statement is made: 'The Lord Ordinary has disallowed the petitioner's 'claim for the expences of the appeal to the House of Lords, 'in respect the judgment of the House of Lords 'does not "give costs.' But the petitioner humbly apprehends that the 'silence of the judgment with respect to costs, does not preclude either the petitioner from claiming, or your Lordships 'from awarding to him, indemnification of these costs, as an article of damage, sustained by reason of the illegal capture and 'detention of his vessel; and he does not see any good reason 'for making a distinction betwixt the expences of the appeal 'and the expences incurred in the Court of Admiralty, and before this Court, to which he is found entitled.' The Court adhered to the Lord Ordinary's judgment in this point; but upon a second appeal, the House of Lords reversed the judgment. The
Mar 22. 1794. whole judgment was in these words: 'Ordered and adjudged, 'That the said respondent do pay, or cause to be paid, to the appellants, the sum of L. 890 : 8 : 7, being the amount of the different sums mentioned in said report of the register of the 'Court of Admiralty, as due for demurrage and dunnage: And 'it is further ordered and adjudged, That the parts of the said 'interlocutors complained of, by which the respondents are decerned to pay to the appellants the sums of L. 82, L. 68, and 'L. 140, together with the expence of extracting the decree, be, 'and the same are hereby affirmed; *and that the said interlocutors*

three particular sums here mentioned, were the expences in the Admiralty Court previous to the first appeal; the expences in the Court of Session also previous to the first appeal; and the expences in the Court of Session subsequent to the remit. All of these were allowed by the Court, and their judgment was affirmed; but the judgment being reversed in all other points, the reversal of course gave the party right to those expences of the appeal which had been rejected by an express finding of the Court.

The pursuers shall state another case, Hunter, Robertson and Company, against the collector of the customs at Greenock. The pursuers, in that case, were owners of a vessel, which, upon its arrival from the West Indies, at Greenock, was seized by the collector of the customs, upon grounds which were considered by the collector sufficient to justify the proceeding. As the pursuers were, however, of a different opinion, and as it was under the revenue laws that the seizure was made, the pursuers brought an action of damages against the collector in the court of Exchequer. The case came to be tried before a Jury, when the Lord Chief Baron, Montgomery, in his charge to the Jury, admitted that the seizure of the vessel was an illegal act; but stated, that, as it was entirely a new case, the Jury ought not to give damages against the collector. The Jury were, however, of a different opinion, and returned a verdict of damages. The Chief Baron declined to receive the verdict; and having again entered into an argument with the Jury, he at last prevailed upon them to give a verdict in favour of the collector. Against the charge of the Chief Baron, a bill of exceptions was taken; and the case having come to be argued before Lord Loughborough, Chancellor, and Lord Thurlow, the latter observed, That he had never seen an appellant so cruelly used by the Court below; and the case was in consequence remitted back to the Court of Exchequer for a new trial. From the extremely strong manner, however, in which Lord Thurlow had expressed himself, the collector had become satisfied that he had no chance of success; and therefore, to avoid the expence of a second trial, he proposed to refer the extent of damages to be paid by him. The reference was to the late Adam Rolland, Esq., and the costs of the appeal were claimed as a part of the damages. The collector resisted this part of the claim, upon the ground that the costs had not been awarded by the House of Lords. But Mr Rolland, founding upon the case of Elphinston, had no hesitation in allowing the claim; as, without it, the pursuers would not have been indemnified.

These cases are much stronger than the present. In Elphinstone's

stone's case, although the defenders had been assoilzied in the Admiralty-Court, and although no damages or expences of any kind had been found due by them in the Court of Session, they were ultimately found liable, not only in the Admiralty-Court expences, but also in the expences of the appeal. But here the defender, by the interlocutor appealed against, was found liable in 'damages 'and expences' generally; and, by dismissing the appeal *simpliciter*, the House of Lords may be held to have affirmed the right of the pursuers to recover all the expences which they were, or might be, in any way put to.

It has been observed, that in the case of Fallejeff, there was a remit from the House of Lords. But this affords no solid ground of difference between the cases, as the affirmance by the House of Lords, of the interlocutor of your Lordships, by which the pursuers were appointed to condescend on their damages, was in itself a virtual remit; while in the case of Fallejeff, there might have been doubts whether the case could have been proceeded in without an express remit.

The pursuers submit, therefore, that this is a fair and just part of the claim of damages.

The pursuers claim damages *in solatium*, 'for the injury to their 'feelings, to their health, and to their private comfort and re-'spectability in society.' And, paying due regard to the recommendation of the Lord Chancellor, they have limited their claim on this head to L. 2000. They submit, that, in doing so, they have shewn the greatest moderation. They ask, if, in all the experience of your Lordships, any libel or calumny, even approaching in atrocity to that raised against the pursuers, has been brought into a court of justice? It is proved, by final judgment, to have been *false;* and what must have been the injury to the feelings of two females of principle and honour, from such a calumny, those only can estimate, who can imagine themselves to be placed in the same situation, and who possess the feelings against which the wound was directed. It is but the other day, that an individual received from a Jury L. 1500, *in solatium* for an injury to his feelings by a newspaper paragraph, which was contradicted within a week, and from which *not a farthing of positive loss* could be proved to have arisen, and this against a gentleman who was in Italy at the time that the paragraph was inadvertently published at Belfast. With submission, every other case of libel sinks into insignificance, in the injury to feeling, in comparison of the present case; and it is infinitely aggravated, by the open and daring attempt of the defender *to prove the truth of it.* And yet the pursuers have restricted their claim for *solatium* to

L. 2000.

L. 2000, fully conscious that, in doing so, they are displaying more moderation and tenderness towards the defender, than she has any right to expect at their hands.

But the defender says, that there are three circumstances here to be considered.

1. She reverts to her old defence of assumed improprieties, irregularities, or imprudences. But your Lordships can never lose sight of the nature of the charge brought against the pursuers. It is upon the falsehood of *that* charge, now proved, that they demand damages *in solatium*. They submit, that no irregularities or imprudences, of a *different description*, even if they were proved, could afford the *slightest excuse* or *palliation* of such an atrocious calumny as that circulated by the defender. But, farther, they must for ever deny, that there is a particle of evidence, entitled to belief, of any impropriety, or any irregularity, or any imprudence, of which the defender had any right to take cognizance, or which is worthy the consideration of a court of justice. Except by assuming the gross and criminal design imputed to them, there was actually nothing that could be described either as improper or imprudent in the conduct of the pursuers. There were differences existing between themselves: but those differences never went beyond themselves. They were unknown to every mortal in the house, except themselves, and Mrs Woods the cause of them; and the defender's own theory so fully assumed this, that it absolutely depended on a *denial* of the *existence* of them. And as to the suspicious circumstances, it is absurd to speak of them, independent of the abominable design imputed. They were nothing more than circumstances so absolutely trivial, that, without such a previous theory, a serious statement of impropriety connected with them would be altogether ridiculous.

The defender has made all that she could of this plea without success: and the pursuers shall only farther say with regard to it, that, if it be necessary, they are still ready to meet her any where upon it, averring, that there was nothing in their conduct to afford the slightest extenuation of the calumny complained of. It is said, that at one time the facts were sufficient to fix the opinions of a majority of the Court. But the pursuers recollect, that those opinions were not fixed, but expressed with great doubt and hesitation, and that one Honourable Judge, constituting that majority, said, that if he had been upon a jury, he must have found the pursuers Not guilty. But, with submission, your Lord-

ships cannot enter into these things. The pursuers know, that, if the defence had been sustained, they could have got no damages. But, this and all the defences being repelled, it is upon that judgment, and no other, that the claim of damages must be determined.

2. The defender states her own conduct as a ground for reducing the damages. It is with regret that the pursuers are under the necessity of saying that they can yield nothing to her on this point. They say, that, so far from proceeding fairly, she did act most rashly, most wantonly, and with most extraordinary cruelty towards the pursuers. They say, that, with the exception of 'premeditated malignity,' of which they never accused her, almost every one statement here made in the answers is contrary to the evidence led in the case. It is not true, that she confined her intimations to those persons whom she had induced to place their children with the pursuers; and the same averment was long ago *disproved* by the very persons to whom she so referred. It is not true, that she had any reasonable grounds even of suspicion against the pursuers; and, at any rate, it is clear, that the pursuers had given her none. But it is a fact, that, upon a tale of her grandaughter, so absurd and infamous, that it would have required the utmost weight of demonstration to entitle it even to a moment's consideration, she, *without any inquiry or any communication with the pursuers*, accused them *to all those in whose hands the very existence of their school then was*, of the grossest offence that was ever laid to the charge of women. It is a fact, that while she was thus, as she herself says, *secretly* charging them with the foulest criminality, she actually *refused, when earnestly and respectfully requested, even to tell themselves of what it was that they were accused*. Their whole school was dispersed, and themselves ruined, before they even heard or could conceive the nature of the charge against them. The pursuers shall not now go farther into details: but they say confidently, that this is not a case, in which the defender can take any credit for fairness, or caution, or regard to the feelings of the parties most interested; but, on the contrary, a case, in which her conduct was marked by the most extraordinary rashness and imprudence, and, whatever other views might influence her, the most unmixed disregard of all that belonged either to the interests or to the feelings of the pursuers.

3. The defender has a third plea which the pursuers did not expect. She appeals to the state of her own fortune as a life-

rentrix,

rentrix, and endeavours to represent her funds as inadequate to the payment of the damages claimed.

The defender has no right to make this plea at all, for a conclusive reason, which shall be immediately stated. But, in the first place, when the defender attempts to resist the payment of damages, far below the actual loss which the pursuers have sustained by her acts, on the ground of the slenderness of her own means, protected as she is by her own family of rank and wealth, it would have been well, that the condition of two helpless females, dependent on their own personal labours, had entered into her reflections, before she rashly ventured upon what they are now entitled to call the false accusation, of the consequences of which they now claim reparation. The defender is pleased to argue her case by the analogy of a servant propagating such a story. Your Lordships know, that such a story propagated by a servant would have been treated with the contempt and ridicule which it deserved, and, at any rate, would not have been believed without inquiry. But Lady Cuming employed her great name, and her condition in society, to crush the pursuers, by an influence which, in the first instance, precluded the possibility of justice. And, with submission, the pursuers could hardly have anticipated, that the defender would have been advised, in any circumstances, to plead inability to satisfy the justice which the laws of the country demand for such a wrong done to the pursuers.

Your Lordships, however, will be informed, that there will be no occasion to consider this part of the case. For the defender is barred from maintaining any such plea. It must be obvious, at first sight, that the pursuers were entitled, at the commencement of the process in 1810, to have arrested the funds of the defender in security of the damages to be found due to them. If they had done so, although the Court would no doubt have allowed to the defender a reasonable sum of aliment, there can be no question, that it would not have been in the power of your Lordships, and the pursuers are confident that you never would have given such a decision, to deprive the pursuers of the benefit of their arrestments; and if they had proceeded in this manner, there would have been a fund now secured sufficient to pay all the damages claimed. They take the liberty of stating, that they were avised to use arrestments: But, with a forbearance which the defender had no right to expect from them, they gave notice to the defender of the advice which they had received, and proposed, that, in order to avoid the great inconvenience

which this measure would occasion to her, she should find security for whatever damages and expences should be ultimately awarded to them in the process. The pursuers apprehend, that they are entitled to have all the credit in this proceeding, which the evidence it affords, of their being actuated by no motive stronger than a true regard to their own just interests, naturally carries with it in a case like this. But the important fact is, that *the security was found.* The pursuers hold *a bond of caution* by Sir William Cuming Gordon and his brother Charles Lennox Cuming, Esq. of Roseisle, for *all the damages* that might be found due, as well as for all the expences. *On the faith of this bond, no arrestments were used.* It is evident, therefore, that it is now out of all question to say a word upon this subject. Even if the bond of caution could be considered as of no greater force than as a bond of caution for loosing arrestments, it would be sufficient to secure the pursuers. But they humbly apprehend, that, as it was given in order to prevent the disagreeable and inconvenient effects of the diligence which the pursuers had a just right to use, it shuts out all discussion on the subject, and effectually binds the defender and her cautioners, in the same manner as if a sufficient fund had been actually secured by arrestment.

The fact here stated renders it unnecessary for the pursuers to enter at all into the private circumstances of the defender. They shall only say, that, if they were to do so, they would require from her a very different statement from that given in the answers; and they think they have information on which they can rely, which would place the state of the defender's funds in a very different light. But it is needless to enter into this. For, if the case shall ever in any degree depend on a plea of inability by Lady Cuming to pay the damages, it will be a question which must depend on a minute investigation of special facts, and not on any general statement of her *yearly income*, which, for any thing that your Lordships know, may have been every farthing accumulated for many years past. But the pursuers feel assured, that the matter will never be reduced to this test.

With regard to the observations in the Lord Chancellor's speech, quoted in the answers, the pursuers beg leave to observe, that they never could be intended to apply to any damages for *actual loss* convincingly proved to have been sustained. It could at the utmost only refer to the question of *solatium*, after the question of actual damage had been first resolved on the most liberal grounds. And, with regard to the *solatium* for injury to feelings,

feelings, health, &c. the remark seems to have proceeded from a strong impression of the extraordinary atrocity of the calumny, and an apprehension, that, in such a case, the feelings of your Lordships, or of a Jury, in assessing the damages, might be in danger of carrying them to excess. But the very peculiarity of this warning is a powerful indication of the feeling entertained of the case itself; and, so far from preventing your Lordships from giving such a *solatium* as the nature of it requires, tends to shew, that the only apprehension entertained was, that, if feeling only were listened to, no damages could be considered too great. The pursuers humbly submit, that, in stating their claim of damages, they have proceeded on no such principle; that they have condescended on their actual loss, on *data* of the most restrained and temperate calculation; and that the sum which they have claimed as a *solatium* to their wounded feelings, is no more than has frequently been awarded for *comparatively insignificant* injuries to feeling *alone*, and is without any exception the *most* moderate demand that ever was made in a case of the kind.

Having thus replied to the whole statements in the answers, and justified, as they trust, the various articles of their condescendence, the pursuers have, notwithstanding, to conclude with another statement, which, they trust, will appear to your Lordships to evince the absence of all vindictive feeling from their minds, and the earnest desire which they entertain of putting an end to all further discussion in the case. They have stated the amount of their *actual* loss to the extent of L.7473; and upon that, if it be necessary, they are perfectly ready and willing to go to proof with the defender, in the most confident belief that they will establish the claim to its utmost extent: And as to the sum of L.2000 demanded as a *solatium*, they consider it to be too clear to admit of dispute, that it is an extremely moderate demand. But, notwithstanding this, and still protesting that even now they are ready to meet any discussion, they must humbly confess, that they have so strong a longing to see a final period put to their discussions with the defender, that if, upon a general view of the evidence already in process, and the statements of the parties in these papers, it should appear to your Lordships, that a general award of damages may be at once given, they will so far forego what they consider to be their just claims, as, without specification, to restrict their demand to the sum of L.5000; and if the defender shall, under

the sanction of your Lordships, make a tender of such a sum, so as to exclude the necessity of all farther controversy or inquiry, they hereby declare that they will accept of it, and grant a general discharge. And with this statement, made without prejudice to their condescendence, they humbly and respectfully leave the case in the hands of your Lordships.

In respect whereof, &c.

JAMES MONCREIFF.

(SECOND DIVISION.)

September 7, 1820.

DUP.—LADY CUMMING GORDON,

to

REP.—MISSES WOODS AND PIRIE.

MACKENZIE & INNES, W. S. *Defender's Agents.*
JAMES BALFOUR, W. S. *Pursuers Agent.*

Mr. Mackenzie, *Clerk.*

'Edinburgh, 30th June 1820.—*The Lords appoint the Defender to 'give in Duplies against the first Box-day in the ensuing Vacation, 'under an Amand of* 40*s. Sterling, and dispense with the Amands 'formerly imposed on both Parties.*

(Signed) 'WILLIAM MILLER, *I. P. D.*'

DUPLIES

FOR

LADY CUMMING GORDON,—*Defender;*

TO THE

REPLIES for MISS MARY ANN WOODS and MISS JANE PIRIE, lately residing at Drumsheugh, near Edinburgh,—*Pursuers.*

1. IT is not altogether fair for the pursuers to say that this first article of the condescendence is admitted. An admission imports that the party knows and acquiesces in the truth of the facts

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facts admitted. The defender knows nothing of the facts here averred, and, therefore, can neither admit nor deny them.

2. As to the averment made in this second head of the condescendence, respecting the number of the pursuers boarders, the defender repeats the observation formerly made, that she neither admits nor denies it, being a matter with which she is wholly unacquainted.

As to the second averment under this head, of the probable increased success and extension of the pursuers establishment in future, the defender must resume the observation which she formerly made, of the extreme improbability of such an event happening, from the state of mutual dissension, irritation, and squabbling into which the pursuers had fallen. It is easy now to say that this was entirely owing to the circumstance of Mrs. Woods being an inmate of the family, and that all causes of dispute would have ceased by her removal. The defender will not now rake up such painful discussions, by quoting from the proof formerly taken in this case; but she will venture to say, that no person who reads it can ever believe the cause now assigned to be adequate to the production of such incessant and bitter agitations as subsisted between these pursuers, and were conspicuous to so many witnesses. Nothing, in short, could be more unlikely, than that persons of such unsettled frames of mind, and such irritation towards each other, could have gone on together, so as to have continued, far less increased, the success of their establishment.

The pursuers conclude this head of the condescendence by saying, that the statement in it is matter of fact, and that they are ready to prove it. How they propose to prove that their establishment would have succeeded had it been allowed to go on,—not a fact that was, but a fact that was to be,—the defender is unable to conjecture.

3. The loss stated upon the sale of furniture does not seem to be in the least explained in these replies, but remains as unaccountable as ever. The averment that at such sales articles always go off at a great undervalue is far from being correct; and, at any rate, the degree of depreciation alleged by the pursuers is wholly incomprehensible, on the supposition that the sale was fair and properly conducted.

4. The observations made on this head afford no answer to what was stated by the defender in regard to this claim. It is still not denied that one of the pursuers obtained an establishment which

which has afforded her a subsistence ever since the breaking up of their school; and no sufficient reason is given why the other pursuer might not have done the same thing, if proper exertions had been made. Any such earnings, it is obvious, must be deducted from a claim of allowance, from the breaking up of the school down to the present time.

But, on the other hand, it must equally be considered, whether a continuation of the same rate of profits was likely, supposing the events which gave rise to this action never had occurred. The defender will not here resume what she has already said of the improbability of such a continuance under the temper and disposition which the pursuers then held towards each other; but the facts on this subject, already alluded to, she submits will give your Lordships the most serious doubts whether any considerable allowance can be made on this score.

5. The claim under this head is for an annuity of 300l. during the remainder of the pursuers lives,—a demand which, besides the singularity and total inadmissibility of it in principle, proceeds on the double erroneous assumption already noticed under a former head, 1*st*, That the pursuers would have continued to the end of their lives to realize an annuity of 300l. but for the circumstances which have happened; and, 2*dly*, That they are now precluded from realizing any future subsistence for themselves.

The pursuers are pleased to say, that the defender talks ironically when she speaks of their character being cleared by the decision of the House of Lords. The defender thinks this observation, with the argument founded on it by the pursuers, somewhat unreasonable. On the one hand, they claim heavy damages against the defender as having calumniated innocent persons;—while, on the other hand, they will not allow the defender to say that they are innocent, but insist on realizing additional emolument, on the supposition that they are still held as guilty.

But, at all events, the character of the pursuers is surely more effectually cleared since the decision in the House of Lords than it was before. Now, it appears that before that decision, one of the pursuers, Miss Woods, was able to obtain a situation. It is stated in these replies, that Miss Woods had been the very first in her line as a public teacher in Edinburgh; that her terms were two guineas for twelve lessons, and that she generally taught twelve hours a day. At this rate she must have made nearly 800l. per annum. And, surely, with such means and accomplishments, persons

sons cannot be considered as destitute, or entitled to an annuity for the rest of their lives, on the supposition of being unable to earn a subsistence.

The whole of this claim, however, (being a hypothetical estimate of loss and damage for an indefinite tract of future time), is submitted to be, in principle, altogether inadmissible, and without example in the allowance of damages by courts of justice.

6. The pursuers attempt to support this very extraordinary claim for the expenses of the appeal to the House of Lords, which were not allowed by their Lordships themselves, by quoting two cases, in which they allege that the same thing was done.

The first is the case Fallejeff *v.* Elphinston, which was the subject of two appeals to the House of Lords; the one in the year 1784, and the other in the year 1794. It was a case very peculiar in its circumstances, and complicated in its details; and, from looking into the appeal cases on both sides, the defender does not conceive that a case can well be figured, less fit to be argued upon as a precedent.

The question there regarded the seizure and detention of a foreign vessel by a privateer belonging to the Honourable William Elphinston and others, in which the Court of Session, conceiving that there were grounds for the detention, assoilzied the owners of the privateer. The House of Lords, however, thinking differently, and conceiving that the merchantman had been illegally and oppressively detained, found the owners of the privateer liable in damages, and remitted the case back to the Court of Session. The case, accordingly, returned to this Court, where a long and intricate litigation took place, in regard to the amount and nature of the damages claimed, which consisted of between 30 and 40 different articles, and among others the expenses of the appeal to the House of Lords. Various articles were allowed by the Court of Session, and various articles disallowed, among others the claim for the expences of appeal. On the case going back to the House of Lords, their Lordships affirmed certain findings of the Court here, as to particular sums; and then ended by a general reversal of the other parts of the judgment, which, no doubt, included, among many other particulars, this claim for the expenses of the first appeal.

On this it is to be observed, in the *first* place, that the claim for expenses of the appeal being involved in a great variety of other matters, which were disposed of by a general reversal, it is, perhaps, not unreasonable to conclude, that the abstract principle, as to

this

this Court giving the expenses of appeal, was not brought deliberately under the view of the House of Lords in giving their judgment. 2*dly*, The first judgment of the House of Lords *contained an express remit to the Court here*, which truly kept all matters open: And the House of Lords, on the second appeal, might justly consider the whole case as still before them, and find the expenses both of the first and second appeal, as being in a manner one cause. 3*dly*, The House of Lords might consider the case of Fallejeff and Elphinston to be one of great hardship and oppression on the one side, and of inexcusable error or violence on the other; and might think it a proper case for giving expenses, although they did not think the present to be one. From all these observations it is submitted, that nothing could be more dangerous than to draw any analogy from such a case as that to the present.

The other case quoted by the pursuers, is, if possible, still less applicable to the present, even upon their own showing; for having given no date or reference, the defender has not been able to find the papers. It appears that in that case a most illegal and oppresssive seizure had been made by an officer of the revenue. On the question being brought into the Court of Exchequer here, the Honourable Judge who then presided had prevailed on the jury to give a verdict for the defendant, not upon any doubt as to his having acted contrary to law, but merely because the case was new. On the case being appealed to the House of Lords, Lord Thurlow declared, 'that he had never seen an appellant so cruelly used by 'the Court below;' and with this strong expression of disapprobation the case was sent back again to Scotland for a new trial. The defendent not choosing, however, to hazard this, in the face of such an opinion, the parties entered into a submission; and the late Mr. Rolland, as arbiter, among other matters of damage, found the expenses of the appeal.

It would surely be a waste of time to show the inapplicability of such a case to the present. It was not only in substance a remit, like that of Fallejeff, but it was a case stigmatized by the highest authority as one of unexampled illegality and oppression, and where, of course, the party aggrieved was entitled to the fullest reparation. Last of all, the matter was settled by an arbiter, who, your Lordships well know, is not bound by the strict rules which regulate a court of justice, but takes a complex and equitable view of the whole circumstances of a case.

But if your Lordships are to be regulated by analogy from your own procedure, in circumstances nearly similar, it is thought that you will have very little doubt of rejecting this claim. For it has been again and again determined, that where expenses have not been found due in this Court, and where the case has been carried to appeal, if the House of Lords do not find the party liable in the expenses incurred here, it is not afterwards competent for your Lordships to find those expenses, though incurred in proceedings before yourselves. Thus, in the case, 6th March 1799, Pringle v. the Legatees of Tod, the summary of the judgment is thus given in the report.—'When a judgment of the Court of Session is re-'versed on appeal, and the cause is remitted to apply the judgment, 'without an instruction to give the appellant the expenses of the 'previous litigation, they cannot afterwards be awarded.' It is remarkable that in this case Lord Meadowbank, Ordinary, did give these expenses of the previous proceedings in the Court of Session, *but expressly refused the expenses of the appeal*, which had been also demanded in that case, as in this. His Lordship's interlocutor is in these words.—'On considering the proceedings in this cause, 'and the judgment and remit of the House of Lords, whereby the 'reasons of reduction are sustained, and the Court is directed to 'proceed accordingly; and being of opinion that, under the circum-'stances of this case, the late Miss Tod cannot, consistently with 'said judgment, have been *in bona fide* to defend said reduction, 'finds the pursuer entitled to his expenses down till the cause was 'appealed; *but finds the claim for expenses incurred in discussing the 'appeal with Miss Tod's legatees incompetent.*'

March 6, 1799, Pringle v. Legatees of Tod.

The statement of the decision of the Court in the report is as follows.—'Upon advising the petition, with answers, the Court 'were clearly of opinion, that the pursuer's claim was incompetent, 'and, therefore, repelled it.' But with regard to the finding of the incompetency of giving the expenses of the appeal, that seems to have been considered so clear as to have been acquiesced in by all parties.

The next case wherein the Court of Session refused to give the previous expenses incurred before themselves, on a reversal of their judgment by the House of Lords, is that of 16th February 1816, Geddes v. Wilkie, &c.; the abstract of which is as follows.—'An 'appeal to the House of Lords from a judgment of the Court of 'Session, refusing to pass a bill of suspension, being followed by a 'reversal

Feb. 16, 1816, Geddes v. Wilkie, &c.

'reversal and decerniture, sustaining defences, without any find-
'ing as to costs, the Court of Session cannot, in applying the judg-
'ment of the House of Lords, award to the appellant the previous
'expenses.'

There is a still later case, 18th June 1818, Wilson *v.* Laidlaw, where the same judgment was repeated, as appears from the following abstract.—'Under a judgment of the House of Lords, contain-
'ing a finding reversing the interlocutors, so far as inconsistent
'with that finding, and remitting the cause, '*to do therein as shall*
"be just,' the Court cannot award to the appellant the expenses
'previous to appeal.' It was here strongly urged by the appellant, that the circumstances were different from those of the two cases already quoted, inasmuch as there was here, first a reversal of the interlocutor, accompanied with a finding on the merits; and then a general remit, *enjoining the Court below to do in the cause as shall be just;* which, it was contended, led the Court into the whole question of the previous expenses. Notwithstanding this, however, the Court adhered to their former principle, 'in respect that the judg-
'ment of the House of Lords is silent upon the subject of expenses.'

June 18, 1818, Wilson v. Laidlaw.

The defender humbly thinks that if the silence of the House of Lords disqualifies this Court from considering the subject of expenses in a case discussed before themselves, that silence must still more disqualify them from considering that point in regard to proings before the House of Lords.

7. The seventh and last claim of the pursuers is for the sum of 5000l., in name of *solatium*, in addition to all those formerly noticed; the whole amounting to not much less than 10,000l. The defender, in her answers, stated various grounds in mitigation of damage upon this head, which she considers to be of the most important application in the present, and in all similar cases; to none of which does it appear to her that the pursuers have made any answer entitled to the smallest attention.

1st, It was submitted by the defender, that a most important element in determining the amount of damages was the conduct of the party who complains. Where that conduct has been wholly blameless and unsuspicious, the claim of damages is, no doubt, infinitely stronger than where it has been such as naturally to give rise to the worst inferences. If a party act in such a way as naturally to lead to unfavourable surmises, it will be no sufficient ground of damage, that it should afterwards be shewn that the

actions,

actions, however suspicious in appearance, were truly innocent; because mankind in this world must give attention to appearances as well as realities. If they exhibit themselves in situations which naturally lead to suspicion, they are themselves to blame; and other persons who form those natural suspicions are excusable. It may happen in this way, that a party may truly be falsely accused, and yet be entitled to no damages whatever.

The defender is really somewhat surprised at the boldness with which the pursuers now come forward and declare that their conduct was liable to no blame or suspicion; because she does not conceive it possible that any impartial person can read the proof in this case, without being satisfied that the improprieties committed by the pursuers were so great, (considering the delicate and important charge which they had undertaken); and that they did expose themselves in circumstances so suspicious, as naturally, and almost necessarily, to give rise to the worst suspicions which were entertained. The defender, though somewhat tempted to go into a detail of the proof by this bold defiance of the pursuers, will still restrain herself, and spare your Lordships the pain and disgust of renewing such an inquiry. She will merely again repeat that strongest of all confirmations of the presumptions against the pursuers, the decision of a majority of this Court. This is a confirmation which can neither be evaded nor denied. The pursuers attempt to quibble upon a *dictum* thrown out by a late most respectable Judge, that had the pursuers been on trial for their lives, he would not have found them guilty. But because tha minent Judge would not, under so grave and tremendous a respon ibility, have held the proof to be so clear beyond all doubt, as to have affected the life of a fellow-creature, is it to be inferred that he did not think the charge against the pursuers to be true? He must have thought so, otherwise he would not have assoilzied the defender from this action. A majority of the Court must have thought so, otherwise they would not have joined in that judgment. And when such a case was made out by proof as to satisfy such minds, can the pursuers now venture to come forward and maintain, that there were no circumstances in their conduct which could attach the least doubt or suspicion to their character? Your Lordships, it is presumed, will think otherwise. You will think that appearances, at least, of the worst kind, must have existed in the pursuers conduct, to have occasioned such suspicions; and that such conduct at once deprives the pursuers of any claim to leavy damages,

mages, and renders excusable the opinions formed by the defender.

2*dly*, The defender submitted in her answers, that the conduct of the party pursued formed another important consideration in fixing the amount of damages. The defender then maintained, and now repeats, without the least fear of contradiction, that no impartial person can consider the circumstances in which she was placed, without thinking that she had every possible excuse that a party can have in making imputations unfavourable to another. She had herself been the warm benefactress of the pursuers,—had placed with them her own nearest connections, and had recommended them to many of her friends. When the imputations against them were first communicated to her, under circumstances which made it impossible for her to doubt of their truth, she was bound, by every tie of honour and duty, to take away her own grandchildren from the pursuers, and to communicate what she had done to one or two ladies, who, on her recommendation, had intrusted their children or relations with the pursuers. This proceeding every motive of interest dissuaded her from, but every feeling of duty enjoined. Even at this late period, after all the distress, anxiety, and loss which this unhappy business has occasioned, she cannot well see how any conscientious parent or friend could have acted otherwise in her situation. She rests with confidence in the belief, that your lordships will be of the same opinion, and that you will think this a case in which damages should be given with the utmost possible moderation, as far as concerns the conduct of the party pursued.

3*d*, The third circumstance which the defender humbly submitted as of great importance in fixing the amount of damage, was the fortune and circumstances of the party subjected. She truly stated, that her whole means of living was a liferent-annuity of 800l., with the liferent of a house and garden in Forres; and she farther stated, that besides her own expenses in this case, which are very great, she had already paid the full expenses found due to the pursuers in this Court, to an amount little short of 1,000l. sterling.

The pursuers are pleased to remark, in reply to this, that all inquiry and discussion on this topic are superseded by the consideration, that it was in their power to have used arrestments of the defender's annuity at the beginning of the process, which would have secured a sufficient fund for their claim of damages at this

 period;

period; and that the defender's sons having undertaken by a bond to become liable for whatever damages should ultimately be found due, all discussion of this matter was at an end.

The defender must confess herself unable to comprehend the force of this reasoning. The interference on the part of the defender's sons, arising from filial duty towards their parent, was solely intended, as your Lordships will readily believe, to prevent her from being distressed, by her only means of subsistence being withdrawn or locked up, while they at least believed that the pursuers would never be able to substantiate any claim against her; and it is a material fact in the consideration of this matter, that the caution given by the defender's sons has not enriched her to the extent of one penny in the meantime; for she has found her whole income but barely adequate to her support, and has expended it all along in that way. She is, therefore, at this moment left without any other means of defraying what your Lordships may award than her future annuity of 800l. a-year. It humbly appears to the defender, then, that the circumstance of her sons having undertaken to pay what damages *might ultimately be found due*, ought not in the slightest degree to affect your Lordships judgment as to the amount of those damages, one way or the other.

The pursuers, towards the end of their replies, advert to the sentiments expressed by the Lord Chancellor, as quoted by the defender; and in vain endeavour to disguise or explain away the opini there so plainly intimated of the moderation of the damages whic. ought to be given in this case. Nobody, it is thought, can read that opinion, without being sensible that his Lordship thought that although there was not sufficient proof before him, to entitle him to assume the most unfavourable construction against the pursuers, there was still enough to satisfy him of the imprudence and impropriety of their conduct, and of the natural and excusable opinion of it formed by the defender. It was in reference, unquestionably, to such considerations, that his Lordship said, 'that undoubtedly it 'would require a very *temperate*, and a very *prudent* consideration, 'what damages should be given, *regard being had to all the circum-* '*stances which occur in the case.*' The weight which so high an authority will have with your Lordships the defender cannot permit herself for a moment to doubt.

The pursuers conclude their paper with an offer to accept of the sum of 5,000l. in full of all demands. On this the defender will only

only say, that the pursuers had the best reason to know that such an offer never would be listened to by her, and, therefore, that the ceremonious tender of it made upon their part, is the merest affectation.

In respect whereof, &c.

ARCH. BELL.